



Investigation and Review of the Federal Bureau of
Prisons' Custody, Care, and Supervision of Jeffrey
Epstein at the Metropolitan Correctional Center in
New York, New York



INVESTIGATIONS DIVISION

23-085

JUNE 2023



EXECUTIVE SUMMARY

Investigation and Review of the Federal Bureau of Prisons' Custody, Care, and Supervision of Jeffrey Epstein at the Metropolitan Correctional Center in New York, New York

Introduction and Background

According to its website, the Federal Bureau of Prisons (BOP)'s current mission statement is "Corrections professionals who foster a humane and secure environment and ensure public safety by preparing individuals for successful reentry into our communities." However, the Department of Justice (DOJ) Office of the Inspector General (OIG) has repeatedly identified long-standing operational challenges that negatively affect the BOP's ability to operate its institutions safely and securely. Many of those same operational challenges, including staffing shortages, managing inmates at risk for suicide, functional security camera systems, and management failures and widespread disregard of BOP policies and procedures, were again identified by the OIG during this investigation and review into the custody, care, and supervision of one of the BOP's most notorious inmates, Jeffrey Epstein.

The OIG initiated this investigation upon receipt of information from the BOP that on August 10, 2019, in the Metropolitan Correctional Center in New York, New York (MCC New York), Epstein was found hanged in his assigned cell within the Special Housing Unit (SHU). The Office of the Chief Medical Examiner, City of New York, determined that Epstein had died by suicide.

The OIG conducted this investigation jointly with the Federal Bureau of Investigation (FBI), with the OIG's investigative focus being the conduct of BOP personnel. Among other things, the FBI investigated the cause of Epstein's death and determined there was no criminality pertaining to how Epstein had died.

This report concerns the OIG's findings regarding MCC New York personnel's custody, care, and supervision of Epstein while detained at the facility from his arrest on federal sex trafficking charges on July 6, 2019, until his death on August 10.

Epstein is Assigned to the SHU on July 7

Epstein was assigned to a cell in the SHU on July 7 due to media coverage of his case and inmate awareness of his notoriety. SHU inmates are securely separated from general population inmates and kept locked in their cells for approximately 23 hours a day.

BOP policy requires SHU staff to observe all inmates at least twice an hour and that Lieutenants conduct at least one round in the SHU each shift. BOP policy also requires multiple inmate counts during every 24-hour period. Among other things, inmate counts and rounds enable BOP staff to observe inmates and ensure they are secure in their cells and in good health. Further, to eliminate safety hazards, MCC New York requires SHU staff to search SHU common areas and at least five cells daily, and to search the entire SHU every week.

On July 18, the court refused to set bail for Epstein and ordered him detained pending trial on the criminal charges.

Incident Involving Epstein on July 23

While in MCC New York, Epstein was screened on numerous occasions by psychological staff, including a formal suicide assessment on July 9. In the evaluations he denied having thoughts or a history of attempted suicide. Psychological staff determined Epstein did not meet the criteria for a psychological diagnosis.

On July 23, at 1:27 a.m., correctional officers (CO) responded to Epstein's SHU cell where they found Epstein with an orange cloth around his neck. Epstein's cellmate told officers Epstein tried to hang himself. Medical staff examined Epstein, observed friction marks and superficial reddening around his neck and on his knee, and placed him on suicide watch. BOP policy requires that inmates identified as suicide risks be placed on suicide watch until no longer at imminent risk. The BOP uses a less restrictive monitoring form,

psychological observation, for inmates who are stabilizing but not yet ready to return to a housing unit. Epstein was removed from suicide watch on July 24 but remained under psychological observation until July 30.

Epstein first told MCC New York staff he thought his cellmate had tried to kill him, but later said he did not know what occurred and did not want to talk about how he had sustained his injuries. Epstein also later asked if he could be housed with the same cellmate. Another inmate housed on the same SHU tier told the OIG that he heard Epstein's cellmate call for assistance, and that Epstein's cellmate told him that Epstein tried to hang himself from the bunkbed ladder. Disciplinary charges against Epstein for alleged self-mutilation were not sustained due to insufficient evidence.

Following the July 23 incident, the Psychology Department determined Epstein needed to be housed with an appropriate cellmate, and on July 30 it sent an email to over 70 MCC New York employees informing them of this requirement. The Warden at the time told the OIG that he selected a new cellmate for Epstein in consultation with BOP executive leadership. That inmate remained Epstein's cellmate until August 9.

Events of August 8–10, 2019, and Epstein's Death

On August 8, the U.S. Marshals Service sent two emails notifying numerous MCC New York staff that Epstein's cellmate was being transferred to another facility on August 9. However, no action was taken to ensure Epstein was assigned another cellmate.

Also on August 8, Epstein met with his attorneys at the prison, as he had on prior occasions, and signed a new Last Will and Testament. MCC New York officials did not learn about the new Will until after Epstein's death.

The following day, August 9, Epstein's cellmate was transferred to another facility and he was not assigned a new cellmate. Additionally, on that date, the U.S. Court of Appeals for the Second Circuit unsealed approximately 2,000 pages of documents in civil litigation involving Ghislaine Maxwell, who was later convicted in December 2021 of conspiring with Epstein to sexually abuse minors over the course of a decade. The documents contain substantial derogatory information about Epstein and there is extensive media coverage of information in the unsealed documents.

Also on August 9, after meeting at the prison with his lawyers, MCC New York staff allowed Epstein to make, in violation of BOP policy, an unrecorded, unmonitored telephone call before he was returned to his SHU cell. Although Epstein said he was calling his mother, in actuality he called someone with whom he allegedly had a personal relationship.

At approximately 8 p.m. on August 9, SHU inmates were locked in their cells for the night, including Epstein who was without a cellmate. A search of Epstein's cell following his death revealed Epstein had excess prison blankets, linens, and clothing in his cell, and that some had been ripped to create nooses. Only one SHU cell search was documented on August 9, and it was not of Epstein's cell. BOP records did not indicate when Epstein's cell was last searched. The OIG also found that SHU staff did not conduct any 30-minute rounds after about 10:40 p.m. on August 9 and that none of the required SHU inmate counts were conducted after 4 p.m. on August 9. Count slips and round sheets were falsified to show that they had been performed.

On August 10, at approximately 6:30 a.m., the two SHU staff on duty, CO Tova Noel and Material Handler Michael Thomas, began delivering breakfast to SHU inmates. Noel unlocked the door to Epstein's SHU tier. When Thomas attempted to deliver breakfast to Epstein through the food slot in his locked cell door, Epstein did not respond to Thomas's verbal commands. Thomas unlocked the cell door and saw Epstein hanged. Thomas immediately yelled for Noel to get help and call for a medical emergency.

Thomas told the OIG that when he entered Epstein's cell, Epstein had an orange string, presumably from a sheet or a shirt, around his neck that was tied to the top portion of the bunkbed. Epstein was suspended from the top bunk in a near-seated position, with his buttocks approximately 1 inch to 1 inch and a half off the floor. Thomas said he immediately ripped the orange string from the bunkbed, and Epstein's buttocks dropped to the ground. Thomas then lowered Epstein's body to the floor and began chest compressions until responding MCC New York staff members arrived approximately 1 minute later. Shortly thereafter, outside medical personnel arrived and took over the emergency response, eventually removing Epstein to a local hospital where he was pronounced dead.

On August 11, 2019, the Office of the Chief Medical Examiner performed an autopsy and determined the

cause of death was hanging and the manner of death was suicide. Blood toxicology tests did not reveal any medications or illegal substances in Epstein's system. The Medical Examiner who performed the autopsy told the OIG that Epstein's injuries were consistent with suicide by hanging and that there was no evidence of defensive wounds that would be expected if his death had been a homicide. Epstein did not have marks on his hands, broken fingernails or debris under them, contusions to his knuckles that would have evidenced a fight, or, other than an abrasion on his arm likely due to convulsing from hanging, bruising on his body.

The Limited Available Video Evidence

Recorded video evidence for August 9 and 10 for the SHU area where Epstein was housed was only available from one prison security camera due to a malfunction of MCC New York's Digital Video Recorder system that occurred on July 29, 2019. While the prison's cameras continued to provide live video feeds, recordings were made for only about half the cameras. MCC New York personnel discovered this failure on August 8, 2019, but it was not repaired until after Epstein's death. As detailed in this report, like many other BOP facilities, MCC New York had a history of security camera problems.

The available recorded video footage from the one SHU camera captured a large part of the common area of the SHU and portions of the stairways leading to the different SHU tiers, including Epstein's cell tier. Thus, anyone entering or attempting to enter Epstein's SHU tier from the SHU common area would have been picked up by that video camera. Epstein's cell door, however, was not in the camera's field of view. The OIG reviewed the video and found that, between approximately 10:40 p.m. on August 9 and about 6:30 a.m. on August 10, no one was seen entering Epstein's cell tier from the SHU common area. The OIG determined that movements captured on video before and after those times were generally consistent with employee actions as described by witnesses and documented in BOP records.

Results of the OIG's Investigation and Review

The OIG's investigation and review identified numerous and serious failures by MCC New York staff, including multiple violations of MCC New York and BOP policies and procedures. The OIG found that MCC New York staff failed on August 9 to carry out the Psychology Department's directive that Epstein be assigned a cellmate, and that an MCC New York supervisor allowed

Epstein to make an unmonitored telephone call the evening before his death. Additionally, we found that staff failed to undertake required measures designed to make sure that Epstein and other SHU inmates were accounted for and safe, such as conducting inmate counts and 30-minute rounds, searching inmate cells, and ensuring adequate supervision of the SHU and the functionality of the video camera surveillance system.

The OIG also found that several staff falsified BOP records relating to inmate counts and rounds and lacked candor during their OIG interviews. Two MCC New York employees, Noel and Thomas, were charged criminally with falsifying BOP records. The charges were later dismissed after they successfully fulfilled deferred prosecution agreements. The U.S. Attorney's Office for the Southern District of New York declined prosecution for other MCC New York employees who the OIG found created false documentation.

The combination of these and other failures led to Epstein being unmonitored and alone in his cell, which contained an excessive amount of bed linens, from approximately 10:40 p.m. on August 9 until he was discovered hanged in his locked cell the following day.

While the OIG determined MCC New York staff engaged in significant misconduct, we did not uncover evidence contradicting the FBI's determination regarding the absence of criminality in connection with how Epstein died. We did not find, for example, evidence that anyone was present in the SHU area where Epstein was housed during the relevant timeframe other than the inmates who were locked in their assigned cells. The SHU housing unit was securely separated from the general inmate population and inmates were kept locked in their cells for approximately 23 hours a day. Access to the SHU was controlled by multiple locked doors. Within the SHU, the entrance to each tier could be accessed only via a single locked door at the top or bottom of the staircase leading to the individual tier. Keys to open the locked tier doors were available to a limited number of COs while on duty. Each tier had eight cells and each individual cell, which was made of cement and metal, could be accessed only through a single locked door, to which a limited number of COs had keys while on duty. The SHU cell doors were made of solid metal with a small glass window and small locked slots that correctional staff used to handcuff inmates and provide food and toiletries to inmates. As a further security measure, during each shift a limited number of the COs had keys while on duty.

SHU staff told the OIG that at approximately 8 p.m. on August 9, all SHU inmates, including Epstein, were locked in their cells for the evening and we found no evidence to the contrary. The prison's recorded video did not identify any staff or other individuals approaching Epstein's SHU tier from the SHU common area between approximately 10:40 p.m. on August 9 and about 6:30 a.m. on August 10. Additionally, the OIG did not observe on the recorded video that Noel and Thomas, who were seated at the desk at the SHU Officers' Station immediately outside the area where Epstein was housed, at any time during the time period rose from their seats or approached the cell block. We additionally found that Thomas's and Noel's reaction on the morning of August 10 upon finding Epstein hanging in his cell, as described to us by Thomas, Noel, the responding Lieutenant, and inmates, was consistent with their being unaware of any potential harm to Epstein prior to Thomas entering Epstein's cell at about 6:30 a.m. on August 10.

None of the MCC New York staff members we interviewed were aware of any information suggesting Epstein's cause of death was something other than suicide. Additionally, none of the inmates we interviewed had any credible information suggesting Epstein's cause of death was something other than suicide. Further, the SHU staff and three interviewed inmates with a direct line of sight to Epstein's cell door on the night of his death stated that no one entered or exited Epstein's cell after the SHU staff returned Epstein to his cell on August 9.

As noted, the surveillance camera in the SHU area where Epstein was housed was live streaming movement in the hallway outside of Epstein's cell. Although the camera was not recording the captured video, the camera was in plain view of the inmates and therefore inmates would have been aware that any hallway movements, including into or out of Epstein's cell, could be monitored by BOP staff, even if, unbeknownst to them, the DVR system was not recording the live stream at that time. As the OIG has noted in numerous prior reports, BOP staff and inmates are aware of where prison cameras are located and often engage in wrongdoing in locations where they know cameras are not located.

We noted as well that Epstein had previously been placed on suicide watch and psychological observation due to the events of July 23, 2019; that numerous nooses made from the excess prison sheets were

found in his cell on the morning of August 10; that no weapons were recovered from his cell after his death; and that he signed a new Last Will and Testament on August 8, 2 days before he died. We found that the staff's failure to assign Epstein a cellmate on August 9; failure to conduct rounds and counts that evening; and to allow him to have excess linens in his cell, left Epstein unmonitored and locked alone in his cell for hours, which provided him an opportunity to commit suicide.

Finally, the Medical Examiner who performed the autopsy detailed for the OIG why Epstein's injuries were more consistent with, and indicative of, a suicide by hanging rather than a homicide by strangulation. The Medical Examiner also cited the absence of debris under Epstein's fingernails, marks on his hands, contusions to his knuckles, or bruises on his body evidencing a struggle, which would be expected if Epstein's death had been a homicide by strangulation.

Conclusion and Recommendations

This is not the first time the OIG has found significant job performance and management failures on the part of BOP personnel and widespread disregard of BOP policies that are designed to ensure that inmates are safe, secure, and in good health. The combination of negligence, misconduct, and outright job performance failures documented in this report all contributed to an environment in which arguably one of the BOP's most notorious inmates was provided with the opportunity to take his own life, resulting in significant questions being asked about the circumstances of his death, how it could have been allowed to happen, and most importantly, depriving his numerous victims, many of whom were underage girls at the time of the alleged crimes, of their ability to seek justice through the criminal justice process. The fact that these failures have been recurring ones at the BOP does not excuse them and gives additional urgency to the need for DOJ and BOP leadership to address the chronic staffing, surveillance, safety and security, and related problems plaguing the BOP.

The OIG made eight recommendations to the BOP to address the numerous issues identified during our investigation and review. Finally, we recommended that the BOP review the conduct and performance of the BOP personnel as described in this report and determine whether discipline or other administrative action with regard to each of them is appropriate.

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Chapter 1: Introduction

The Federal Bureau of Prisons (BOP) is a component of the Department of Justice (DOJ) that operates 122 institutions across the United States. According to its website, the BOP's current mission statement is "Corrections professionals who foster a humane and secure environment and ensure public safety by preparing individuals for successful reentry into our communities." However, the DOJ Office of the Inspector General (OIG) has issued numerous reports over more than a decade identifying long-standing operational challenges facing the BOP that have negatively affected its ability to operate its institutions safely and securely. Those reports have contained dozens of recommendations to the BOP. As we detail in this report, many of those same operational challenges and systemic issues, including significant staffing shortages, providing appropriate custody and care of inmates at risk for suicide, the absence of functional security camera systems, and management failures and widespread disregard of BOP policies and procedures, were once again identified by the OIG during the course of this investigation and review into the custody, care, and supervision of one of the BOP's most notorious inmates, Jeffrey Epstein. We therefore make further recommendations to the BOP in the conclusion of this report to help it address these recurring issues.

The OIG initiated this investigation upon the receipt of information from the BOP that on the morning of August 10, 2019, in the Metropolitan Correctional Center located in New York, New York (MCC New York), inmate Jeffery Epstein was found hanged in his assigned cell within the Special Housing Unit (SHU). The SHU is a housing unit where inmates are securely separated from the general inmate population and kept locked in their cells for approximately 23 hours a day, to ensure their own safety as well as the safety of staff and other inmates. Epstein had been placed in the SHU on July 7, 2019, the day after his arrest, due to the significant media coverage of his case and awareness of his notoriety among MCC New York inmates.

According to information obtained by the OIG during the investigation, at approximately 8 p.m. on August 9, all SHU inmates, including Epstein, were locked in their cells for the evening. Additionally, the six separate tiers or groups of cells within the SHU were also securely locked. At approximately 6:30 a.m. on August 10, 2019, SHU staff unlocked the door to the SHU tier in which Epstein's cell was located in order to deliver breakfast to inmates through the food slots in the locked cell doors. When SHU staff entered the tier to deliver breakfast to Epstein, SHU staff knocked on the locked door to Epstein's cell. Epstein, who was housed alone in the cell, did not respond to SHU staff. SHU staff unlocked the cell door and found Epstein hanged in his cell, with one end of a piece of orange cloth around his neck and the other end tied to the top portion of a bunkbed in Epstein's cell. Epstein was suspended from the top bunk in a near-seated position with his buttocks approximately 1 inch to 1 inch and a half off the floor and his legs extended straight out on the floor in front of him. Epstein's cell contained an excess amount of prison linens, as well as multiple nooses that had been made from torn prison linens.

SHU staff immediately activated a body alarm, which notified all MCC New York staff of a medical emergency and prompted MCC New York staff assigned to the Control Center to call for 911 emergency services. SHU staff then ripped the orange cloth away from the bunkbed, which caused Epstein's buttocks to drop to the ground. SHU staff laid Epstein on the ground and immediately initiated cardiopulmonary resuscitation (CPR). At approximately 6:33 a.m., other MCC New York employees responded to the SHU. A responding MCC New York Lieutenant took over administering CPR and asked SHU staff to retrieve an automated external defibrillator and call for the duty nurse. A Clinical Nurse responded and continued to perform CPR on Epstein in the place of the Lieutenant. At approximately 6:39 a.m., Epstein was placed on a stretcher and

moved by medical staff to the MCC New York Health Service Unit.¹ The Clinical Nurse continuously administered CPR until he was relieved by outside Emergency Medical Technicians (EMT) when they arrived at the Health Services Area minutes later. The EMTs continued CPR, intubated Epstein, and administered medication and fluids in their efforts to revive him. At approximately 7:10 a.m., Epstein was transported by the EMTs in an ambulance to New York Presbyterian Lower Manhattan Hospital, where he was pronounced dead by an emergency room physician at 7:36 a.m. On August 11, 2019, the Office of the Chief Medical Examiner, City of New York, performed an autopsy on Epstein and determined that the cause of death was hanging and the manner of death was suicide.

The OIG conducted this investigation jointly with the Federal Bureau of Investigation (FBI), with the OIG's investigative focus being the conduct of BOP personnel. Among other things, the FBI investigated the cause of Epstein's death. The FBI determined that there was no criminality pertaining to how Epstein had died. This report concerns the OIG's findings regarding MCC New York personnel's custody, care, and supervision of Epstein during his detention at the facility from his arrest on July 6, 2019, until his death on August 10, 2019.

The OIG investigation and review identified numerous and serious failures by MCC New York staff, as well as multiple violations of MCC New York and BOP policies and procedures. Among the most significant was the failure to assign Epstein a new cellmate on August 9, 2019, after Epstein's cellmate was transferred out of MCC New York that day. Epstein was required to have a cellmate at all times pursuant to a written direction that the MCC New York Psychology Department issued on July 30 after Epstein was removed from suicide watch and psychological observation following a possible attempted suicide by him on July 23. As a result of the failure to assign him a new cellmate, Epstein was housed alone in his cell from the night of August 9 until he was found hanged in his cell by SHU staff at approximately 6:30 a.m. the following morning. In addition, we determined that SHU staff failed to conduct required inmate counts and rounds, including overnight on August 9-10, and allowed Epstein to have an excess of blankets, linens, and clothing in his cell. These failures compromised Epstein's safety, the safety of other inmates, and the security of the institution, and provided Epstein an opportunity to commit suicide while locked alone in his cell on the morning of August 10 without having been subject to overnight observation or supervision by SHU staff.

The OIG also found that an MCC New York supervisor had allowed Epstein, in violation of BOP policy, to make an unrecorded, unmonitored telephone call the evening before his death to an individual with whom he allegedly had a personal relationship. Further, 2 days before his death, during a meeting with his lawyers in a private room at the MCC New York, Epstein signed a new Last Will and Testament, which MCC New York officials did not learn about until after his death.

Additionally, the OIG determined that MCC New York staff assigned to the SHU, including the two SHU staff on duty the night of August 9-10, 2019, who were stationed at a desk that was directly outside the SHU tier in which Epstein was housed and diagonally across from Epstein's cell, had falsified BOP records to claim

¹ Moving an inmate requiring outside emergency medical care to the Health Services Unit provides health care staff and Emergency Medical Technicians (EMT) with immediate access to any necessary medical equipment and supplies and allows EMTs faster access to the inmate when they arrive at MCC New York because Correctional Officers (CO) can directly escort EMTs to the Health Services Unit to begin emergency treatment immediately. If EMTs had to be escorted to the housing unit, they would first need to be thoroughly screened, which would delay medical attention.

that they had conducted all of the required counts of inmates and 30-minute rounds during their shifts within the SHU. As described in greater detail in Chapter 2, inmate counts and 30-minute rounds are two means by which the BOP accounts for inmates and assesses their safety, security, and well-being. BOP and MCC New York policies require that staff members count all inmates in each housing unit within the facility at designated times each day. Additionally, BOP and MCC New York policies require that a staff member observe all SHU inmates at least once during the first 30 minutes of each hour (e.g., 12 a.m. to 12:30 a.m.) and again during the second 30 minutes of the hour (e.g., 12:30 a.m. to 1 a.m.), thus ensuring that inmates are observed at least twice per hour. BOP staff are required to document inmate counts and 30-minute rounds on official BOP forms, which are often referred to as “count slips” and “round sheets.”²

During the OIG’s investigation, the OIG obtained information that the staff assigned to the MCC New York SHU did not conduct any counts of inmates within the SHU from August 9, 2019, at approximately 4 p.m., until Epstein was found hanged in his cell on the morning of August 10, 2019. However, in documentation completed by the SHU staff on duty during that period, staff members falsely certified in the count slips that they had conducted the required counts. Additionally, the OIG investigation revealed that the staff assigned to the MCC New York SHU did not conduct any required 30-minute rounds of inmates after approximately 10:40 p.m. on August 9, 2019. Again, however, SHU staff on duty during that period had falsely certified in the round sheet that the required rounds were conducted. The combination of these and other failures led to Epstein being unmonitored and locked alone in his cell, which the OIG found contained an excessive amount of bed linens, from approximately 10:40 p.m. on August 9 until he was discovered hanged in his cell at approximately 6:30 a.m. the following day.

While the OIG determined that MCC New York staff committed significant violations of BOP and MCC New York policies and falsified records related to their conducting inmate counts and rounds, the OIG did not uncover evidence that contradicted the FBI’s determination regarding the absence of criminality in connection with how Epstein died. All MCC New York staff members who were interviewed by the OIG said they did not know of any information suggesting that Epstein’s cause of death was something other than suicide. Additionally, none of the 15 inmates who agreed to be interviewed in connection with this investigation, 10 of whom were housed in the SHU on August 9 and 10, had any credible information suggesting that Epstein’s cause of death was something other than suicide. Further, the SHU staff and the three interviewed inmates with a direct line of sight to the door of Epstein’s cell from their cells stated that no one entered or exited Epstein’s cell after the SHU staff returned Epstein to his cell on the evening of August 9, which is consistent with the security measures in place within the MCC New York SHU. SHU staff told the OIG that at approximately 8 p.m. on August 9, all SHU inmates were locked in their cells for the evening and that there was no indication that any of the other inmates could have gotten out of their cells. Additionally, the OIG analyzed the available recorded video of the SHU, which was limited to the common area of the SHU, including the SHU Officers’ Station, due to the MCC New York security camera system’s recording issues that we detail in this report.³ The OIG’s analysis of the recorded video did not identify any Correctional Officers (CO) or other individuals approaching any of the SHU tiers, including the L Tier where

² These BOP forms are officially entitled “Official Count Slip” and “MCC New York, Special Housing Unit, 30 Minute Check Sheet.”

³ For reasons we describe below, while the camera inside the L Tier was working and transmitting live video, the video was not being recorded.

Epstein was housed, from the common area of the SHU between approximately 10:40 p.m. on August 9 and approximately 6:30 a.m. on August 10.

Finally, the Medical Examiner who performed the autopsy detailed for the OIG why Epstein's injuries were more consistent with, and indicative of, a suicide by hanging rather than a homicide by strangulation. The Medical Examiner also cited to the absence of debris under Epstein's fingernails, marks on his hands, contusions to his knuckles, or bruises on his body that evidenced Epstein had been in a struggle, which would be expected if Epstein's death had been a homicide by strangulation.

As discussed in greater detail in the Conclusions and Recommendations chapter of this report, this is not the first time that the OIG has found significant job performance and management failures on the part of BOP personnel and widespread disregard of BOP policies that are designed to ensure that inmates are safe, secure, and in good health. The OIG has investigated numerous allegations related to the falsification of official BOP documentation concerning inmate counts and rounds and has repeatedly found deficiencies with the BOP's staffing levels, the custody and care of inmates at risk for suicide, and security camera systems at BOP institutions. The combination of negligence, misconduct, and outright job performance failures documented in this report all contributed to an environment in which arguably one of the most notorious inmates in BOP's custody was provided with the opportunity to take his own life. The BOP's failures are troubling not only because the BOP did not adequately safeguard an individual in its custody, but also because they led to questions about the circumstances surrounding Epstein's death and effectively deprived Epstein's numerous victims of the opportunity to seek justice through the criminal justice process. The fact that these failures have been recurring ones at the BOP does not excuse them and gives additional urgency to the need for DOJ and BOP leadership to address the chronic problems plaguing the BOP.

Unless otherwise noted, the OIG applies the preponderance of the evidence standard in determining whether DOJ personnel have committed misconduct. The U.S. Merit Systems Protection Board applies this same standard when reviewing a federal agency's decision to take adverse action against an employee based on such misconduct. See 5 U.S.C. § 7701(c)(1)(B) and 5 C.F.R. § 1201.56(b)(1)(ii).

In Chapter 2 of this report, we provide background information, including identification and a description of significant entities and individuals; a summary of our methodology; and the applicable laws, federal regulations, and BOP policies. In Chapter 3, we outline a timeline of key events. In Chapter 4, we set forth our findings of fact relating to the BOP's custody and care of Epstein before his death. In Chapter 5, we set forth our findings of fact related to the events of August 8–10, 2019, including Epstein's death. In Chapter 6, we set forth our findings of fact related to the BOP's failure to ensure that there was a functional security camera system at MCC New York, which resulted in limited recorded video evidence relevant to Epstein's death. Finally, Chapter 7 contains our conclusions and recommendations.

Chapter 2: Background

I. Significant Entities and Individuals

Jeffrey Epstein was born in 1953 and, prior to his arrest, worked at various jobs in the financial industry and ultimately developed considerable wealth. On July 2, 2019, a federal grand jury of the U.S. District Court for the Southern District of New York returned an indictment that charged Epstein with engaging in sex trafficking and a sex trafficking conspiracy, in violation of 18 U.S.C. §§ 371, 1591(a), (b)(2), and 2. These charges were based on allegations that between 2002 and 2005, Epstein paid girls as young as 14 years old hundreds of dollars in cash each for engaging in sex acts with him at his Florida and New York residences. The indictment further alleged that Epstein also paid each of these minor victims hundreds of dollars in cash to recruit other girls to engage in sex acts with Epstein.

On July 6, 2019, Epstein was arrested at Teterboro Airport in New Jersey upon his return to the United States from France and was transported to the Federal Bureau of Prisons' (BOP) Metropolitan Correctional Center, located at 150 Park Row in New York, New York (MCC New York). Following a detention hearing on July 15, 2019, the court ordered that Epstein be detained pending trial based on the court's finding that he was a danger to the community and a flight risk.

MCC New York is a federal administrative detention facility operated by the BOP that primarily provides pretrial detention services for the U.S. District Courts for the Southern and Eastern Districts of New York. The BOP temporarily closed MCC New York in October 2021 due to substandard conditions that are unrelated to this investigation. When it was operational, MCC New York housed approximately 750 inmates at any given time. Prior to its closure, the majority of MCC New York's inmate residents were individuals with pending criminal charges (as opposed to individuals who had been convicted of offenses and were serving a sentence of imprisonment), but whom the court had determined under applicable law should remain in custody pending trial either because they represent a danger to the community, a substantial flight risk, or both. MCC New York has several different housing units. Epstein was initially assigned to MCC New York's general inmate population, but on July 7, 2019, he was moved to the Special Housing Unit (SHU) pending reclassification due to the significant increase in media coverage and awareness of his notoriety among the other inmates. The SHU is a housing unit within MCC New York where inmates are securely separated from the general inmate population and kept locked in their cells for approximately 23 hours per day, to ensure their own safety as well as the safety of staff and other inmates.

Correctional Officer (CO) Tova Noel and Material Handler Michael Thomas began working together in MCC New York SHU at 12 a.m. on August 10, 2019.⁴ During their shift, they each created and submitted falsified official BOP forms documenting inmate counts (often referred to as "count slips"), and Noel completed and signed more than 75 separate entries on an official BOP form documenting 30-minute rounds (often

⁴ Noel worked her regular shift in the SHU from 4 p.m. to 12 a.m. on August 9, 2019, followed by an overtime shift in the SHU from 12 a.m. to 8 a.m. on August 10, 2019. Thomas did not work his regular shift as a Material Handler in a different location of MCC New York and instead worked an overtime shift in the SHU from 12 a.m. to 8 a.m. on August 10, 2019.

referred to as a “round sheet”) falsely stating that she and Thomas had conducted such rounds when, in fact, they had not.⁵

On November 19, 2019, a federal grand jury of the U.S. District Court for the Southern District of New York returned an indictment that charged Noel and Thomas with one count each of conspiracy and multiple counts each of falsification of records, in violation of 18 U.S.C. §§ 371, 1001(a)(3), and 2. The indictment alleged that on August 9, 2019, Noel failed to conduct the mandatory 4 p.m. and 10 p.m. counts of inmates in the MCC New York SHU, and that on August 10, 2019, both she and Thomas failed to conduct the mandatory 12 a.m., 3 a.m., and 5 a.m. counts and mandatory 30-minute rounds within the MCC New York SHU. The indictment further alleged that Noel and Thomas created, certified, and submitted false documentation indicating that the counts and rounds had been done as required to conceal their failure to perform their assigned duties. As a result, it appeared from documentation that prisoners in the SHU, including Epstein, were being regularly monitored when, in fact, no CO had checked on Epstein from approximately 10:40 p.m. on August 9, 2019, until approximately 6:30 a.m. on August 10, 2019, when Epstein was found hanged in his cell.

On May 25, 2021, the U.S. Attorney's Office for the Southern District of New York entered into deferred prosecution agreements with Noel and Thomas. Their respective agreements, which are part of the court record in their cases, included admissions by Noel and Thomas that they falsely certified that they had conducted counts and rounds. The agreements also required each of them to truthfully and completely disclose all information related to their activities and employment with the BOP; be interviewed by the U.S. Attorney's Office of the Southern District of New York, the FBI, and the OIG; complete 100 hours of community service; refrain from violating the law; and fulfill other conditions related to pretrial supervision and their establishment of good behavior. On December 13, 2021, after Noel and Thomas successfully fulfilled the terms of their deferred prosecution agreements as determined by the prosecutors, the U.S. District Court for the Southern District of New York entered a nolle prosequi order and dismissed all charges pending against them. Prosecution was declined by the U.S. Attorney's Office for the Southern District of New York for other BOP employees assigned to the SHU who also falsely certified inmate count slips and round sheets on the day before and the day of Epstein's death.

As discussed in greater detail in Chapter 7 of this report, the OIG found that, in addition to Noel and Thomas, many other MCC New York staff members engaged in administrative misconduct, exercised poor judgment, and/or failed to adequately perform their assigned duties.

II. Methodology

During the course of this investigation, the OIG interviewed 54 witnesses, several on more than one occasion. The witnesses interviewed included Noel, Thomas, and other MCC New York staff assigned to the SHU on August 9-10, 2019; MCC New York supervisors at the time of Epstein's death, including the Warden, Associate Wardens, Captain, and Lieutenants; medical staff; staff members responsible for the MCC New York security camera system; other BOP staff and contractors; and a relative of Epstein, who had

⁵ These BOP forms are officially entitled “Official Count Slip” and “MCC New York, Special Housing Unit, 30 Minute Check Sheet.” Each of the 6 tiers in the SHU had a separate round sheet, each of which had 13 entries reflecting 30-minute rounds were conducted, when they were not, in fact, completed.

requested to provide information.⁶ The BOP employees and contractors we interviewed included employees involved in various aspects of the emergency response, who worked at MCC New York in the days leading up to the response and following the response, as well as other individuals with information pertinent to our investigation. Additionally, the OIG participated in interviews of 15 inmates who had been housed at MCC New York during time periods relevant to our investigation, including three who were housed in the L Tier of the SHU on the day Epstein died.⁷ Those three L-Tier inmates were housed in cells opposite Epstein's cell and therefore had a direct line of sight to Epstein's cell on the night of August 9–10. The OIG also reached out to one of Epstein's attorneys to discuss the possibility of providing information, but ultimately the attorney declined to be interviewed, citing attorney-client privilege (the attorney-client privilege survives a client's death) and issues related to ongoing litigation involving Epstein's estate.

The OIG also collected over 127,000 documents, as well as MCC New York video and photographs. Among these were BOP documents, including staff rosters; daily logs and reports; investigative and incident reports; documentation regarding inmate counts and 30-minute rounds; inmate housing assignment documentation; inmate transfer documents; Psychology Department reports and medical records relating to Epstein; Epstein's institutional phone call records; MCC New York records of Epstein's visits with his attorneys; electronic communications, including text messages and emails of BOP employees and contractors; MCC New York security camera surveillance video; records from contractors regarding the MCC New York security camera system; service records for MCC New York's security camera system; MCC New York photographs, including photographs taken of efforts to revive Epstein on the morning of August 10, 2019; BOP policies and program statements; MCC New York Post Orders; and financial records. The OIG also conducted forensic analysis of the computers located in the SHU and BOP cellular telephones. In addition, the OIG reviewed FBI investigative records, including interview reports (FD-302), notes from witness interviews and other meetings, and electronic communications. The OIG also reviewed Epstein's autopsy report and interviewed the Medical Examiner who performed the autopsy on Epstein.

III. Applicable Law, Regulations, and BOP Policies

A. Standards of Conduct

The Standards of Ethical Conduct for Employees of the Executive Branch sets out general principles that are designed to "ensure that every citizen can have complete confidence in the integrity of the Federal Government."⁸ Among other things, these standards require that every federal employee "use official time

⁶ On a separate occasion, the relative contacted the OIG to say that the relative had "photographic proof" that the door to Epstein's cell was left open the night Epstein died. When the OIG followed up with the relative to request copies of the photographs and any information regarding this allegation, the relative stated that upon further review, the photographs did not show what the relative previously communicated to the OIG.

⁷ The U.S. Attorney's Office for the Southern District of New York sought interviews from inmates housed in the L Tier of the SHU on the night that Epstein died, each of whom was represented by counsel. Three inmates agreed to be interviewed. The OIG does not have the authority to compel or subpoena testimony from individuals who are not DOJ employees.

⁸ 5 C.F.R. § 2635.101(a).

in an honest effort to perform official duties.”⁹ The ethical regulations also mandate that federal employees not use federal property “for other than authorized activities.”¹⁰

BOP policy (Program Statement 3420.11, Standards of Employee Conduct) imposes several additional standards of conduct on its employees. At all times, BOP employees must “[c]onduct themselves in a manner that fosters respect for the Bureau of Prisons, the Department of Justice, and the U.S. Government.” Because “[i]nattention to duty in a correctional environment can result in escapes, assaults, and other incidents,” BOP employees “are required to remain fully alert and attentive during duty hours.” BOP policy provides that employees can use government property for authorized purposes only, and further specifies that personal use of government office equipment, such as computers, “will not take place during official working hours.” BOP policy requires that employees “obey the orders of their superiors at all times.”

B. False Statements and Lack of Candor

Under federal law, “whoever, in any matter within the jurisdiction of the executive...branch of the Government of the United States, knowingly and willfully...makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry” has violated 18 U.S.C. § 1001(a)(3). The terms “knowingly and willfully” mean that the subject acted with knowledge that the conduct was, in a general sense, prohibited by law. It is not required that the subject was aware of the existence of Section 1001.

Under BOP standards of conduct discussed above, employees are required to cooperate fully with official investigations, which includes providing “all pertinent information they may have” and “truthfully responding to questions.”

C. Relevant BOP Policies Regarding the Operation of Correctional Facilities

1. Special Housing Units

SHUs within BOP facilities are governed by federal regulations, 28 C.F.R. §§ 541.21-541.33. These regulations provide that the BOP may establish SHUs “where inmates are securely separated from the general inmate population.” These regulations and BOP policy (Program Statement 5270.11, Special Housing Units) explain that inmates in the SHU are either on administrative detention or disciplinary segregation status. Administrative segregation status is a non-punitive designation that removes an inmate “from the general population when necessary to ensure the safety, security, and orderly operation of correctional facilities, or protect the public.” There are several reasons an inmate can be placed in administrative detention status, including when an inmate’s presence in the general inmate population presents a threat to self or others, or when administrative detention status is necessary for the protection of the inmate. Assignment to the SHU for protection reasons can be based on being a victim of an assault, acting (or being perceived) as an informant, refusing to enter general population, or because of staff concerns about the inmate’s safety.

⁹ 5 C.F.R. § 2635.705(a); see also 5 C.F.R. § 2635.101(b)(5).

¹⁰ 5 C.F.R. § 2635.101(b)(9); see also 5 C.F.R. § 2635.704(a).

Inmates in the SHU are securely separated from general population inmates and are kept locked in their cell when in their assigned tier within the SHU. As discussed in greater detail in Chapter 4, witnesses told the OIG that SHU inmates are locked in their cells for approximately 23 hours a day. BOP policy provides that, weather and resources permitting, SHU inmates will have the opportunity to exercise outside their quarters 5 hours per calendar week. Under federal regulations and BOP policy, SHU inmates ordinarily have the opportunity to shower at least 3 times a week, typically on different days in 1-hour periods. SHU inmates may also be escorted from their cells by MCC New York staff for visits, including legal visits, court appearances, medical and psychological attention. The MCC New York SHU Post Orders require that all visitors to the SHU be documented in a visitor log, and that any inmate visiting the SHU, such as inmates on work details, be searched visually and with a hand-held metal detector, without exception. The MCC New York SHU Post Orders also require that food carts be searched inside and out before being brought into a SHU cellblock and that all meals be delivered to each inmate's cell through the food slot in the inmate's locked cell door.

BOP policy provides that inmates housed in the SHU for 30 continuous calendar days are to be examined and interviewed by a mental health staff member to assess the inmate's adjustment and the threat presented to self or others.

BOP policy also requires that all staff assigned to the SHU participate in quarterly training on, among other things, orderly supervision, suicide prevention, and security procedures relating to the unit. When a staff member is assigned to the SHU at the last-minute and has not completed the quarterly training, the staff member must be advised of the general requirements of a SHU post and be permitted to ask questions about the duties.

2. *Inmate Accountability*¹¹

a. Counts

Inmate counts serve an important security function, as they enable COs to ensure that all inmates are accounted for and present at the appropriate location within the facility. BOP policy requires that each institution "conduct, at a minimum, five official inmate counts during every 24-hour period," and that on "weekends and holidays an additional count will be conducted at 10:00 a.m." At least 1 count a day during the week and 2 counts a day on weekends and holidays must be "stand-up counts," which means that inmates are required to stand when they are counted. MCC New York SHU Post Orders designate that counts must occur at 12 a.m., 3 a.m., 5 a.m., 4 p.m., and that stand-up counts are to be conducted at 10 p.m. daily and also at 10 a.m. on weekends and federal holidays.

The BOP requires that each count be conducted by at least two officers, one of whom will count the inmates while the other observes the unit for any unauthorized movement from the end of the tier. This requirement is also set out in the MCC New York SHU Post Orders. The two officers will then switch roles and compare the count numbers. If the totals do not match, then the officers must conduct another count in the same manner. When conducting the count, officers are required to observe each inmate's body and not rely solely on movement or sound. Officers conducting the count relay the count verbally to the Control

¹¹ This section describes inmate accountability measures that are most relevant to this investigation and review. The BOP utilizes a variety of other security and inmate accountability tools in addition to those discussed in this section, which are described in BOP Program Statement 5500.14, Correctional Services Procedures Manual.

Center, which maintains the master count of all inmates, and then remain in the unit until the Control Center accepts the count. If a count reported verbally does not match the master count, then the Control Center must notify the Operations Lieutenant and the staff members must recount the inmates. If the second count does not match the master count, then the Operations Lieutenant will order a bed-book count, that is, when inmates are counted using their picture cards, which are on file in the Control Center. A Lieutenant must take at least 1 count in the morning and one in the evening.

Correctional staff prepare count slips for each count, which must be prepared in ink, signed by both officers, and retained for 30 days. Count slips may not be altered. BOP policy provides that the "official count will not be cleared until all count slips are received and verified in the Control Center."

b. 30-Minute Rounds

The BOP uses additional accountability measures for inmates who are in administrative detention or disciplinary segregation, i.e., for those detained in a SHU. In such cases, a correctional staff member must observe all inmates at least twice an hour, once during the first 30 minutes (e.g., 12 a.m. to 12:30 a.m.) and again during the second 30 minutes (e.g., 12:30 a.m. to 1 a.m.). BOP policy provides that these "rounds are to be conducted on an irregular schedule and no more than 40 minutes apart." These same requirements for rounds are also described in the Post Orders for the MCC New York's SHU.

c. Documentation Regarding Inmate Status and Confinement

BOP policy also provides that each institution must prepare a daily change/transfer sheet, which indicates changes to an inmate's status, including housing and job assignments and medical convalescence. The MCC New York SHU Post Orders require that correctional staff assigned to the SHU create a SHU file for each inmate housed in that unit and that morning watch officers audit the inmate files every night. The MCC New York SHU Post Orders further specify that all pertinent information about an inmate's confinement should be noted on a Special Housing Unit Record Form (BP-292), and that SHU officers must maintain a log of pertinent information regarding inmate activity and enter such information into the BOP computer system TRUSCOPE, which provides institution staff with detailed inmate and institution security-related information and provides unit officers an electronic event log.

d. Cell Searches

BOP policy requires that BOP staff routinely and irregularly search housing units to, among other things, maintain sanitary standards and eliminate safety hazards.¹² The MCC New York SHU Post Orders require that officers assigned to the SHU conduct searches of the SHU common areas and cells, and that the entire SHU be searched every week. BOP policy and MCC New York SHU Post Orders require written documentation of each housing unit search.

3. Psychological Screening

a. Initial Screening

Pursuant to BOP policy governing inmates in pretrial detention status (Program Statement 7331.04, Pretrial Inmates), all pretrial inmates must have an initial risk/needs assessment screening within 48 hours of

¹² BOP Program Statement 5521.06, Searches of Housing Units, Inmates, and Inmate Work Areas.

admission to the institution. The goal of this screening is to determine “the inmate’s security, medical, psychological, and/or other special needs.” The BOP also requires that institutions screen pretrial inmates “returning from court, as events at court may alter the inmate’s separation and/or security needs.” BOP policy further recognizes that there are often “high security, high profile inmates” who may present a significant threat to themselves or others, and that the “need to identify and monitor these inmates regularly is paramount.”

b. Suicide Prevention

The BOP’s suicide prevention program is governed by federal regulations, 28 C.F.R. §§ 552.40-552.42, which require the BOP to establish a suicide prevention program to identify and manage potentially suicidal inmates. Pursuant to these regulations, when an inmate is identified as being at-risk for committing suicide, BOP staff must place the inmate on suicide watch until the inmate is no longer an imminent risk.

BOP policy (Program Statement 5324.08, Suicide Prevention Program) requires that medical staff screen all new inmates, ordinarily within 24 hours, for signs of suicidality. However, at MCCs, among other facilities with high rates of admissions and short lengths of stays, “comprehensive psychological intake conducted by Psychology Services ordinarily will be performed only on inmates who are suspected of being suicidal or appear psychologically unstable.” Inmates in the SHU are monitored more closely, and inmates exhibiting signs of potential suicide risk are referred to the shift Lieutenant. BOP policy recognizes that inmates who are placed in the SHU due to a request for protective custody are at greater risk of committing suicide and should therefore be screened for suicidal ideation within 72 hours of arriving in the SHU. BOP policy explicitly states that “staff must never take lightly any inmate suicide threats.” Any staff member who has reason to believe that an inmate may be suicidal should “ordinarily maintain the inmate under direct, continuous observation.”

Every BOP institution must have one or more rooms, ordinarily in the health services area, dedicated to inmates placed on suicide watch. Suicide watch may be conducted by specially trained staff or inmates. For inmates placed on suicide watch, the specially trained staff or inmate maintains continuous observation of the inmate believed to be at risk of committing suicide. Following suicide watch and based on clinical findings following a face-to-face evaluation, the inmate will be removed from suicide watch or transferred to a medical referral or health care facility. Psychological observation is a less restrictive form of individual monitoring that is used for inmates who are stabilizing and not yet prepared for placement in general population or restrictive housing. While on suicide watch, the inmate is normally required to wear a suicide watch gown and will be allowed a suicide watch blanket.

As discussed in greater detail in Chapter 4, witnesses told the OIG that an inmate is placed on suicide watch when the inmate is believed to be imminently suicidal. During suicide watch, the inmate is under constant observation by staff; the cell lights are on 24 hours a day; and the inmate is given a special mattress, blanket, and smock to wear. Although psychological observation is a lower classification, witnesses told the OIG that at MCC New York the psychological observations was the same as suicide watch except that inmates were allowed to have their clothing and some materials, such as books, as determined by the Psychology Department. At MCC New York, psychological observation was used to see how an inmate was doing before releasing the inmate to a housing unit.

4. *Suicide Response*

Recognizing that failure to appropriately respond to an emergency can jeopardize the safety of staff and inmates and the security of the institution, the BOP's Standards of Employee Conduct require that "employees respond immediately, effectively, and appropriately during all emergency situations." The MCC New York General Housing Unit Post Orders outline the required response to a suspected inmate suicide. These orders require that MCC New York staff notify the Operations Lieutenant and Control Center of the situation. The orders further provide that, once there is adequate staff present, immediate action must be taken to open the inmate's airway and initiate cardiopulmonary resuscitation, even if MCC New York staff believe that the inmate "has been dead for a period of time." MCC New York staff are to continue cardiopulmonary resuscitation until they are relieved by medical staff or another rescuer. The BOP policy governing crime scenes and the collection of evidence provides that the need to immediately attend to an apparent suicide victim, undertake lifesaving measures, and ensure inmate and staff safety take precedence over efforts to preserve a crime scene.¹³

5. *Inmate Discipline*

Federal regulations, 28 C.F.R. §§ 541.1-541.8, and BOP policy (Program Statement 5270.09, Inmate Discipline Program) establish an inmate discipline program, which is designed to ensure the safety, security, and orderly operation of correctional facilities, as well as the protection of the public. The inmate discipline program applies to all inmates in BOP custody, including inmates with pending criminal charges. One of the guiding principles of this program is that BOP staff are to take disciplinary action when and to such a degree as necessary to regulate the behavior of inmates to promote a safe and orderly institution. "Tattooing or self-mutilation" is among the prohibited acts sanctioned through the inmate discipline program. This prohibited act falls within the second most severe category of offenses on a 4-tier scale. The BOP defines "tattooing or self-mutilation" as "[t]o put indelible patterns on the skin; to injure, disfigure or make imperfect by removing or irreparably damaging parts of the body (wrist cutting falls within this offense)."¹⁴ The definition does not make an explicit reference to suicide attempts other than inclusion of "wrist cutting."

Among other things, BOP policy addressing the inmate discipline program identifies the prohibited acts, describes the process for adjudicating violations, and lists applicable penalties for each category of offense. As relevant to this matter, the discipline process begins when a staff member observes an inmate commit a prohibited act and issues a report documenting the incident. A BOP supervisor then investigates the alleged inmate misconduct, which includes taking a statement from the inmate regarding the incident. If an inmate appears to be mentally ill at any stage of the disciplinary process, a mental health staff member will examine the inmate and assess the inmate's competency to participate in the disciplinary process. If the inmate is found to be competent and the prohibited act falls into the first or second most severe category, the matter is referred to a discipline hearing officer, who will hold a hearing and make a determination as to whether the inmate committed the prohibited act and, if so, impose any of the sanctions that correspond to the severity of the prohibited act. At the hearing, the inmate is advised of his or her rights and permitted to

¹³ BOP Program Statement 5510.14, Crime Scene Management and Evidence Control, is a restricted policy that is not released to the public in its entirety.

¹⁴ BOP Elements of Prohibited Acts.

choose a staff representative, make a statement, and call witnesses. The inmate is also allowed to appeal the outcome through the BOP's administrative remedy program.

6. *Conditions of Confinement*

a. Telephone Calls

The federal regulations, 28 C.F.R. §§ 540.100-540.106, that govern telephone calls for inmates require that the Warden of each BOP institution establish procedures to monitor inmate telephone conversations, which is "done to preserve the security and orderly management of the institution and to protect the public." For safety and security reasons, BOP policy (Program Statement P5264.08, Inmate Telephone Regulations) requires that all inmate telephone calls be made through the Inmate Telephone System. BOP policy recognizes that "on rare occasion, during times of crisis," inmates may be permitted to make a telephone call outside of the Inmate Telephone System. In such circumstances, the telephone "must be placed in a secure area (e.g., a locked office)," and "must be set to record telephone calls." Additionally, the staff member coordinating the call must notify the BOP's Special Investigative Services via email, providing the inmate's name and register number, the date and time of the call, the number and name of the individual called, and the reason for the call. The Special Investigative Services must enter this information into the telephone recording system within 7 days.

b. Personal Effects, Medication, and Linens

Federal regulations governing BOP SHUs provide that inmates in administrative detention status ordinarily may have a reasonable amount of personal property.¹⁵ Under BOP policy regarding SHUs, the personal property of SHU inmates "may be limited or withheld for reasons of security, fire safety, or housekeeping."¹⁶ The BOP Chief Pharmacist issues medication each workday for inmates in the SHU. Restricted medications are administered to inmates during daily SHU rounds. Each institution determines "the medication(s) and amount (number of days) an inmate in SHU may maintain in their cell." Inmates may also purchase pre-approved over-the-counter medications at the commissary. MCC New York General Housing Units Post Orders provide that when an inmate is released or transferred out of a housing unit, the inmate will remove all limited and government-issued clothing from the cell in which the inmate was previously housed. These Post Orders further specify that all cells are to be cleaned daily by inmates occupying the cell, and that blankets, towels, and other linens will not be used as rugs or hung over inmate bunk beds at any time. Pursuant to these Post Orders, MCC New York housing unit officers on all three shifts are responsible for maintaining "a high level of sanitation" and a "safe and clean environment."

¹⁵ 28 C.F.R. § 541.31(h)(1).

¹⁶ BOP Program Statement 5270.11, Special Housing Units.

Chapter 3: Timeline of Key Events

Except as otherwise noted, the following information is derived from the Federal Bureau of Prisons (BOP) records and the Office of the Inspector General's interviews.

September 21–24, 2018	The BOP awards contracts to two companies (Company 1 and 2) to upgrade the security camera system at Metropolitan Correctional Center in New York, New York (MCC New York). At the time, images from the MCC New York's analog video cameras are recorded to a Digital Video Recorder (DVR) system, which is divided into two DVR systems. Cameras assigned to the DVR 1 system record only to the DVR 1 hard drives, and cameras assigned to DVR 2 system record only to the DVR 2 hard drives.
March 17, 2019	In connection with MCC New York's upgrade of its security camera system, the BOP's Northeast Regional Office begins arranging for technicians from other BOP institutions to perform temporary duty (TDY) assignments to MCC New York to perform necessary mechanical, electrical, plumbing, and wiring work. However, during the course of the TDY rotations, work is not consistently conducted on the camera upgrade because TDY personnel are sometimes used to cover shortages at MCC New York's custody posts.
July 2, 2019	According to court records, a federal grand jury of the U.S. District Court for the Southern District of New York returns an indictment charging Epstein with sex trafficking and conspiracy to commit sex trafficking.
July 6, 2019	Epstein is arrested at an airport in New Jersey and is transported for detention pending his initial court appearance to the MCC New York as a pretrial detainee. Epstein is placed in the general inmate population and medically screened.
July 7, 2019	An MCC New York Facilities Assistant asks the Psychology Department to evaluate Epstein because he appears "distraught, sad, and a little confused." Epstein is assigned to the MCC New York's Special Housing Unit (SHU) because of significant media attention and his notoriety among other MCC New York inmates. ¹⁷

¹⁷ The SHU is a housing unit within MCC New York where inmates are securely separated from the general inmate population and kept locked in their cells for approximately 23 hours a day, to ensure their own safety as well as the safety of staff and other inmates.

July 8, 2019	According to court records, Epstein is arraigned in federal court and enters a plea of not guilty to all charges. The court sets a detention hearing for July 15, 2019. MCC New York staff conducts a routine intake screening of Epstein, the records of which indicate that Epstein denies a history of any mental health problems. After the Chief Psychologist consults with the National Suicide Prevention Coordinator from BOP's Central Office, the Psychology Department conducts a further evaluation of Epstein after his return from court. Records show that Epstein denies any suicidal thoughts but was placed on psychological observation due to the presence of risk factors (high-profile case, nature of the charges, pre-trial status, and ongoing proceedings).
July 9, 2019	The Psychology Department administers a formal, in-person suicide risk assessment for Epstein. The Psychology Department continues psychological observation for another day pending a suitable housing placement.
July 10, 2019	The Psychology Department removes Epstein from psychological observation and returns him to the SHU with a recommendation that he have a cellmate. Epstein is housed with another inmate (Inmate 1).
July 11, 2019	An MCC New York psychologist meets with Epstein briefly and recommends follow-up visit to occur the next week.
July 15, 2019	According to court records, Epstein appears in court for his detention hearing.
July 16, 2019	At Epstein's request, an MCC New York psychologist meets with him during a legal visit.
July 18, 2019	According to court records, Epstein appears in court for a ruling on the issue of detention. The court orders that Epstein be detained pending trial because he presents a danger to the community and he is a flight risk. The Psychology Department conducts 30-day psychology reviews for the entire SHU population. Epstein is not in the SHU at the time and therefore his review is not conducted.

July 22, 2019	According to court records, Epstein files an appeal of the court's order denying Epstein pretrial release.
July 23, 2019	At approximately 1:27 a.m., SHU staff hears noises coming from Epstein's cell. Epstein's cellmate (Inmate 1) says that Epstein has attempted to hang himself. SHU staff observes Epstein lying on the floor with a piece of orange cloth around his neck. Epstein initially tells MCC New York staff that his cellmate tried to kill him. Epstein's cellmate (Inmate 1) tells MCC New York staff that while he was asleep, he felt something hit his legs and when he turned on the light, he saw Epstein with a string around his neck and called the guards.¹⁸ Epstein is transferred out of the SHU and placed on suicide watch in a cell near the Psychology Department and Health Services Unit. Later that morning, Health Services Unit personnel conduct a medical assessment and observe that Epstein has a red mark two-thirds of the way around the front and sides of his neck. The BOP assesses Epstein for risk of suicide and determines that he should remain on suicide watch.
July 24, 2019	At approximately 8:45 a.m., Epstein is removed from suicide watch but remains under psychological observation in the same cell near the Psychology Department and Health Services Unit. Medical staff examine Epstein at 1:08 p.m. and Psychological Services staff complete a Post Suicide Watch Report. In contrast to his prior statement that his cellmate tried to kill him, Epstein says he does not remember how he sustained the injuries to his neck.
July 25–29, 2019	Epstein is seen by the Psychology Department daily and on each date adamantly denies suicidality or having any memory of what occurred on July 23, 2019.
July 29, 2019	Psychology Department staff determine that Epstein can be released from psychological observation and transferred back to the SHU. ¹⁹

¹⁸ When interviewed by the OIG, another inmate housed in the same SHU tier (Inmate 2) at the time of the July 23 incident said he heard Inmate 1 call for assistance, and that Inmate 1 later told him that Epstein had tried to kill himself by hanging himself from the bunkbed ladder.

¹⁹ The investigation revealed that Epstein was originally scheduled to return to the SHU on July 29, 2019, but at his request he remained on psychological observation until July 30, 2019. The BOP's SENTRY database, which is a BOP

Continued

Disk failures occur in DVR 2 of MCC New York's security camera system, which results in the system being unable to record, although the cameras continue to work and broadcast live video feed. MCC New York personnel do not learn of the DVR 2 recording failure until August 8, 2 days before Epstein's death. Roughly half of MCC New York's security cameras, including those located in the SHU, are assigned to record to the DVR 2 system.

July 30, 2019

Epstein is transferred back to the SHU.²⁰

An MCC New York Staff Psychologist from the Psychology Department sends an email to over 70 BOP staff members stating that Epstein "needs to be housed with an appropriate cellmate." Epstein and his new cellmate (Inmate 3) are placed in a cell within the SHU that can accommodate the electrical needs of Epstein's medical device.

MCC New York conducts disciplinary proceedings against Epstein for alleged self-mutilation and ultimately concludes that there is insufficient evidence to find that Epstein engaged in a prohibited act.²¹ When Epstein is psychologically evaluated in connection with the disciplinary proceedings, he says he does not remember how he sustained the marks around his neck.

MCC New York personnel attempt to obtain an estimate from Company 1 to run the wiring and conduit for the new camera system, which would eliminate the need for BOP technicians to perform the work.

July 31, 2019

According to court records, Epstein appears in court for a status conference, at which time the court sets deadlines for motions and responses. Upon his return to MCC New York, the U.S. Marshals Service provide paperwork to BOP that indicates Epstein had "suicidal tendencies."

database that contains information relating to the care, classification, subsistence, protection, discipline, and programs of federal inmates, was not updated to reflect this change because it indicated that Epstein was transferred back to the SHU on July 29, 2019.

²⁰ The OIG's investigation revealed that at some point after he returned to the SHU from suicide watch and psychological observation, Epstein asked two different MCC New York staff members if he can be housed with the same cellmate Epstein initially said tried to kill him.

²¹ The BOP's inmate discipline program and the offense with which Epstein was charged is further described in Chapter 2.

The Psychology Department conducts a clinical visit with Epstein, who denies any suicidal ideation.

August 1, 2019

MCC New York Receiving and Discharge staff notify the Psychology Department of the notation of “suicidal tendencies” on U.S. Marshals Service paperwork relating to Epstein. The Psychology Department conducts a suicide risk assessment of Epstein, who denies that he is suicidal, and determines that suicide watch is not warranted. Psychological staff recommend a follow-up in 1 week.

August 2, 2019

MCC New York Special Investigative Services complete its investigation into the incident on July 23, 2019, and finds that there is insufficient evidence to determine that Epstein harmed himself or that he was harmed by his cellmate.

August 8, 2019

Epstein is seen by the Psychology Department and denies suicidal ideation, intention, or plan.

Epstein meets with his attorneys and, unbeknownst to MCC New York personnel, changes his Last Will and Testament during the meeting.

MCC New York staff receive notice that Epstein’s cellmate will be transferred out of the institution the following day, August 9.

MCC New York staff discover the disk failures that occurred in the DVR 2 system on July 29 and that resulted in approximately one half of the institution’s security cameras not recording, although the cameras continued to broadcast a live video feed. MCC New York staff do not perform the work necessary to restore recording functionality of the DVR 2 system or address long-standing performance failures with the institution’s camera system.

August 9, 2019

At approximately 8:30 a.m., Epstein’s cellmate (Inmate 3) is transferred out of MCC New York. Two MCC New York SHU staff members said they notified supervisory staff of Epstein’s cellmate’s transfer and Epstein’s need for a new cellmate. Other witnesses did not corroborate these statements. Epstein is not assigned a new cellmate as required by the Psychology Department.

Sometime between 8 a.m. and 9 a.m., Epstein meets with his attorneys in the SHU attorney conference room. Sometime prior to 1 p.m., Epstein’s

attorneys ask MCC New York staff members if Epstein could be moved to a different housing unit or housed without a cellmate.

MCC New York staff obtain the replacement hard drives to repair the institution's security camera system but do not complete the repairs necessary to restore recording functionality and address long-standing performance failures with the institution's DVR 2 system.

The U.S. Court of Appeals for the Second Circuit unseals approximately 2,000 pages of documents in civil litigation involving Ghislaine Maxwell, who is later convicted in December 2021 of conspiring with Epstein to sexually abuse minors over the course of a decade. Some of these documents contain information that may relate to the criminal charges pending against Epstein. There is extensive media coverage of information in the unsealed documents.

At approximately 6:45 p.m., Epstein leaves the attorney conference room.

At approximately 7 p.m., contrary to BOP policy but with the permission of a Unit Manager, Epstein is permitted to place an unmonitored telephone call to a number with a New York City area code, purportedly to speak with his mother. In actuality, Epstein speaks with someone with whom he allegedly has a personal relationship. After the call, Epstein is returned to his cell, where he remains without a cellmate.

MCC New York SHU staff members do not conduct the 4 p.m. or 10 p.m. inmate counts. After approximately 10:40 p.m., SHU staff members do not conduct the required 30-minute rounds.

August 10, 2019

MCC New York SHU staff members do not conduct the 12 a.m., 3 a.m., or 5 a.m. inmate counts or any of the 30-minute rounds from 12 a.m. until approximately 6:30 a.m.

At approximately 6:30 a.m., SHU staff begin to deliver breakfast to inmates in the SHU through the food slots in the locked cell doors. When SHU staff attempt to deliver breakfast to Epstein, SHU staff unlock the door to the tier in which Epstein's cell was located and then knock on the door to Epstein's cell. Epstein, who is housed alone in the cell, does not respond to SHU staff. SHU staff unlock the cell door and find Epstein hanged in his cell, with one end of a piece of orange cloth around his neck and the other end tied to the top portion of a bunkbed in Epstein's cell. Epstein is suspended from the top bunk in a near-seated position with his

buttocks approximately 1 inch to 1 inch and a half off the floor and his legs extended straight out on the floor in front of him.

SHU staff immediately activate a body alarm, which notified all MCC New York staff of a medical emergency and prompted MCC New York staff in the Control Center to call for 911 emergency services. SHU staff then rip the orange cloth away from the bunkbed, which causes Epstein's buttocks to drop to the ground. SHU staff lay Epstein on the ground and immediately initiate cardiopulmonary resuscitation (CPR). At approximately 6:33 a.m., BOP medical staff respond to the SHU, continue CPR, apply the automated external defibrillator, and move Epstein to MCC New York's Health Services Unit. Minutes after arriving in the Health Services Unit, an ambulance arrives and paramedics continue CPR, intubate Epstein, and administer medications and fluids. At approximately 7:10 a.m., the ambulance takes Epstein to New York Presbyterian Lower Manhattan Hospital, where he is pronounced dead at 7:36 a.m. by the emergency room physician.

MCC New York staff unsuccessfully attempts to recover video from the DVR 2 system of the SHU and the BOP begins repairing the DVR 2 system. The FBI seizes all hard drives contained in the DVR 2 system as evidence.

- | | |
|---------------------------|---|
| August 11, 2019 | The Office of the Chief Medical Examiner, City of New York, conducts an autopsy of Epstein. |
| August 14–15, 2019 | The FBI returns to MCC New York and seizes additional components of the DVR 2 system and the entire DVR 1 system. The FBI's Digital Forensics Analysis Unit in Quantico, Virginia, begins to conduct a forensic analysis of MCC New York's DVR systems and determines that there were catastrophic disk failures in the DVR 2 system disk array and no recordings were available on the DVR 2 system after July 29, 2019. |
| August 16, 2019 | The Office of the Chief Medical Examiner, City of New York, releases its findings publicly that the cause of Epstein's death was hanging and that the manner of death was suicide. |

Chapter 4: Custody and Care of Epstein Prior to His Death

I. Epstein's Arrest and Detention on July 6

On July 2, 2019, a grand jury of the U.S. District Court for the Southern District of New York returned a two-count indictment that charged Epstein with committing sex trafficking and a sex trafficking conspiracy, in violation of 18 U.S.C. §§ 371, 1591(a), (b)(2), and 2, based on allegations that he sexually exploited and abused dozens of minor girls, some as young as 14 years old, at his homes in New York and Florida. The indictment alleged that from at least 2002 through 2005, Epstein enticed and recruited girls, many of whom he knew were underage, to visit his homes and perform sex acts in exchange for paying each girl hundreds of dollars in cash. The indictment further alleged that Epstein, working with employees and associates, created a vast network of underage victims to sexually exploit in New York and Florida by paying some victims hundreds of dollars in cash each to recruit other minor girls to be similarly abused by Epstein. In addition to the two criminal charges, the indictment also contained forfeiture allegations, which sought to forfeit to the United States any property that was either used to commit or was a proceed of the charged sex trafficking offense, including Epstein's New York residence.

On Saturday, July 6, 2019, Epstein was arrested at Teterboro Airport in New Jersey upon his return to the United States from France. He was transported to the Metropolitan Correctional Center located in New York, New York (MCC New York), where he was initially placed in the general inmate population. MCC New York is a federal administrative detention facility operated by the Federal Bureau of Prisons (BOP). The BOP temporarily closed MCC New York in October 2021 due to substandard conditions that are unrelated to this investigation. When it was operational, MCC New York housed primarily pretrial detainees who had not yet been convicted of any offense, but whom the court had determined under applicable law should remain in custody pending trial either because they represent a danger to the community, a substantial flight risk, or both. Due to the significant media attention surrounding his arrest and his notoriety among other MCC New York inmates, the following day Epstein was moved to MCC New York's Special Housing Unit (SHU), a housing unit within MCC New York where inmates are securely separated from the general inmate population and kept locked in their cells for approximately 23 hours per day, to ensure their own safety as well as the safety of staff and other inmates. On Monday, July 8, 2019, Epstein appeared in federal court and pleaded not guilty to the charges. The court ordered that Epstein remain in custody pending a detention hearing scheduled for July 15, 2019.

At the detention hearing, Epstein sought to be placed in home detention at his New York residence with electronic monitoring and other conditions. The prosecutors sought to have Epstein detained at MCC New York pending trial. The court reviewed the parties' filings and heard argument on the matter of pre-trial release on July 15, 2019. On July 18, 2019, the court ordered that Epstein be detained pending trial. In its ruling, the court noted that because Epstein had been indicted for a violation of the federal sex trafficking statute that involved minor victims, there was a presumption in favor of detention under federal law. The court found that the United States had shown by clear and convincing evidence that Epstein threatened the safety of another person and of the community based on testimony from two victims, the allegations of repeated sexual abuse of minors, and the lewd photographs of young-looking women or girls that were found during an authorized search of Epstein's New York residence in July 2019. The court also relied on the recommendation of U.S. Pretrial Services, the seriousness of the offenses with which Epstein had been charged, evidence reflecting Epstein's harassment and intimidation of and tampering with witnesses involved in a prior Florida state criminal investigation, and Epstein's lack of compliance with his legal

obligations as a registered sex offender. The court found that the United States had also shown by a preponderance of the evidence that Epstein was a flight risk based on the severity of the criminal charges and severity of the potential punishment; the strength of the evidence against Epstein; and Epstein's criminal history, sex offender registration, vast wealth and substantial liquid assets, multiple residences, a foreign residence, limited family ties in the United States, private plane(s), extensive overseas travel, and possession of a foreign passport bearing Epstein's photograph but not his name. Finally, the court found that Epstein's pretrial release proposal was inadequate because, among other things, it did not contain sworn, accurate, or comprehensive financial statements; it required excessive court involvement in routine aspects of the proposed home confinement; the proposed consent to extradition was unenforceable; and the proposed appointment of a trustee to monitor Epstein's compliance with release conditions was unacceptably vague and problematic due to the potential conflict of interest presented by monitoring the conduct of a person who paid the trustee's salary, and allegations that Epstein engaged in unlawful acts with his employees during the sex trafficking conspiracy. Epstein appealed the court's order on July 22, 2019. This appeal remained pending at the time of Epstein's death.

II. MCC New York's Special Housing Unit

Epstein was initially assigned to MCC New York's general inmate population, but on July 7, 2019, at approximately 7:20 p.m., he was moved to the SHU pending reclassification due to the significant increase in media coverage and awareness of his notoriety among other MCC New York inmate residents. The SHU is a housing unit within MCC New York where inmates are securely separated from the general inmate population and kept locked in their cells for approximately 23 hours a day, to ensure their own safety as well as the safety of staff and other inmates. Inmates in the SHU are either on administrative detention or disciplinary segregation status. Administrative segregation status is a non-punitive designation that removes an inmate from the general population when it is necessary to do so to ensure the safety, security, and orderly operation of the correctional facility or to protect the public. The MCC New York employee who was the Acting Evening Watch Activities Lieutenant on August 9, 2019, told the Office of the Inspector General (OIG) that most inmates housed in the SHU are "locked down" in their cells for most of the day. Other witnesses told the OIG that SHU inmates are locked in their cells for approximately 23 hours a day. The Warden of MCC New York during Epstein's period of detention at that facility, along with Associate Warden 1 and the Acting Evening Watch Activities Lieutenant, explained that this was one of the reasons that conducting rounds in the SHU was so important. Unlike inmates in general population housing, SHU inmates could not physically approach a staff member; therefore, the staff member had to go to each inmate's cell.

Witnesses told the OIG that Epstein's daily routine in the SHU was to meet with his attorneys in the attorney conference room all day until approximately 8 p.m.²² MCC New York attorney logs confirmed that Epstein had daily visits with attorneys from several different law practices throughout the period of his detention at MCC New York. This is consistent with the information available in SENTRY, a BOP database that contains information relating to the care, classification, subsistence, protection, discipline, and programs of federal inmates, which indicates that Epstein had one to two attorney visits on all but 1 day he was detained at MCC New York. BOP emails reflect that other attorneys expressed frustration to a Supervisory Staff Attorney with the BOP's Consolidated Legal Center for New York because attorneys had to wait hours or were unable to

²² As discussed in Chapter 1, BOP policy provides that SHU inmates may be escorted from their cells by MCC New York staff for visits, including legal visits, court appearances, medical and psychological attention, showers, and recreation.

meet with their clients because Epstein and his attorneys were occupying the attorney conference room, even at times when Epstein had to leave the conference room for a medical visit.

At MCC New York, the SHU was located on the south side of the institution's ninth floor and was often referred to as "9 South." Primary access to the SHU was controlled by a locked door (Main Exterior Entry Door). That door was opened remotely by a staff member in MCC New York's centralized Control Center. Access into the SHU was further controlled by a second locked door (Main Interior Entry Door), to which a limited number of Correctional Officers (CO) had keys while on duty.

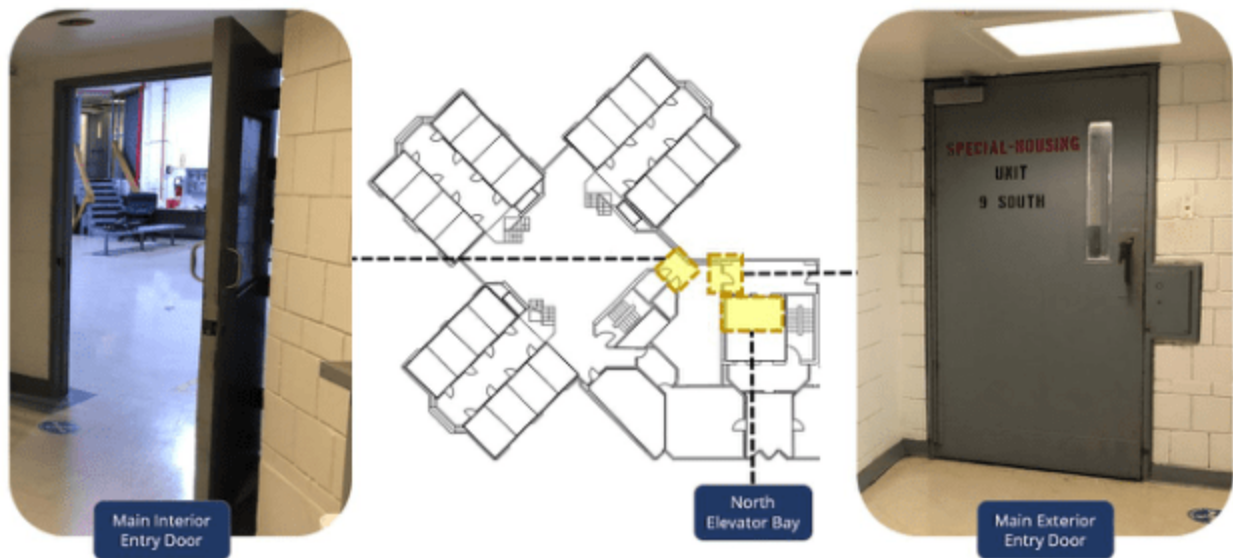
Secondary access to the SHU was controlled by a locked door. That door was opened remotely by a staff member in the centralized Control Center. Entry into the SHU from the secondary access point was further controlled by three additional locked doors, to which a limited number of the COs had keys while on duty. The secondary access doors were used only by staff when facilitating visits between the SHU inmates and their outside visitors.

Within the SHU, inmates were assigned to six separate tiers or groups of cells, three of which were accessible via stairs leading up from the common area on the ninth floor (Upper Tiers—G, J, and L Tiers) and three of which were accessible via stairs leading down from the common area on the ninth floor (Lower Tiers—H, K, and M Tiers). The entrance to each tier could be accessed only via a single locked door at the top or bottom of the staircase leading to the individual tier. A limited number of keys to open the locked tier doors were available only to a limited number of COs while on duty. Each tier had eight cells, each of which could house either one or two inmates. Each individual cell, which was made of cement and metal, could be accessed only through a single locked door, to which only a limited number of COs had keys while on duty. The SHU cell doors were made of solid metal with a small glass window and small locked slots that correctional staff used to handcuff inmates and provide food or toiletries to inmates. As a further security measure, during each shift the keys to the SHU tier doors and SHU cell doors were carried by different COs.

As noted above, inmates in the SHU are securely separated from the general inmate population and are kept locked in their cell when in their assigned tier within the SHU. Witnesses told the OIG that SHU inmates are locked in their cells for approximately 23 hours a day. BOP policy provides that, weather and resources permitting, SHU inmates will have the opportunity to exercise outside of their quarters 5 hours per calendar week. Under federal regulations and BOP policy, SHU inmates ordinarily have the opportunity to shower at least 3 times a week, typically on different days in 1-hour periods. SHU inmates may also be escorted from their cells by MCC New York staff for visits, including legal visits, court appearances, medical and psychological attention. The MCC New York SHU Post Orders require that all visitors to the SHU be documented in the SHU visitor log, and that any inmate visiting the SHU, such as inmates on work details, be searched visually and with a hand-held metal detector, without exception. The MCC New York SHU Post Orders also require that food carts be searched inside and out before being brought into a SHU cellblock and that all meals be delivered through the cell door food slot of the locked cell door.

Figure 4.1

Primary SHU Entrance (Ninth Floor)



Note: The photograph on the right has been modified for security reasons.

Source: DOJ OIG photographs and DOJ OIG schematic drawing depicting the MCC New York SHU

Figure 4.2

Secondary SHU Entrance (Ninth Floor)

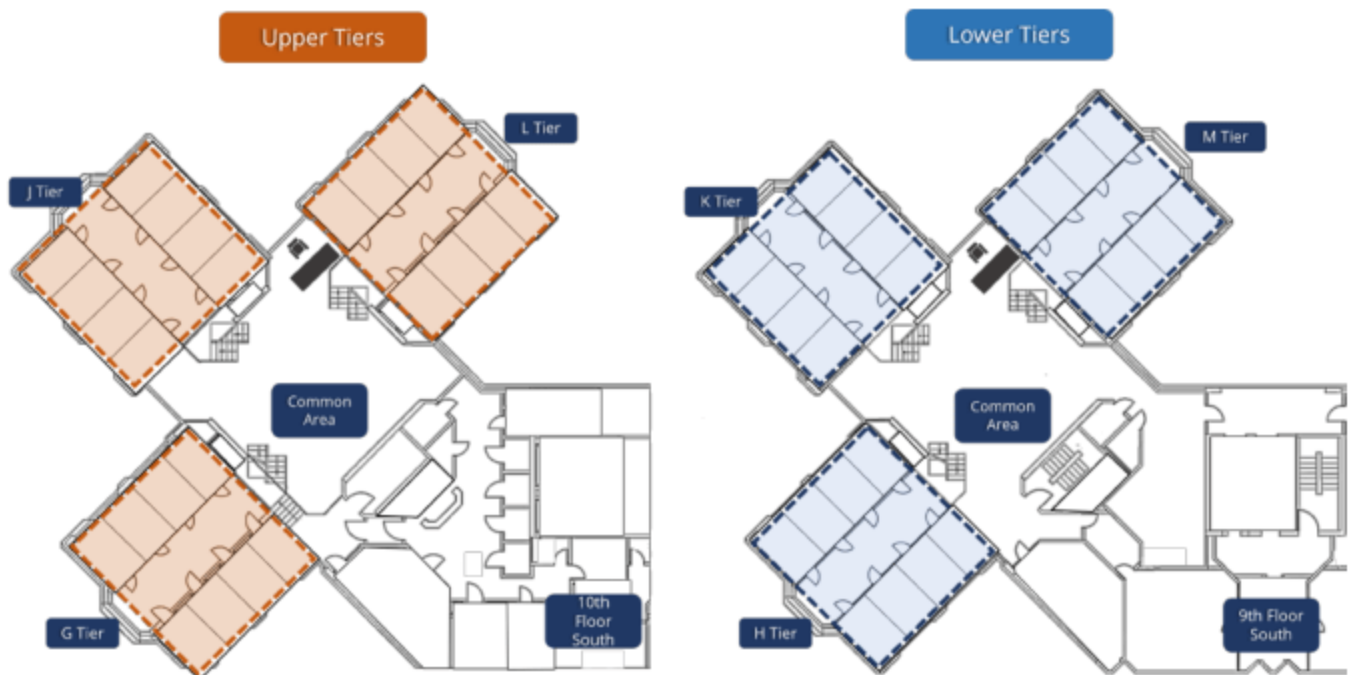


Note: The photograph on the right has been modified for security reasons.

Source: DOJ OIG photographs and DOJ OIG schematic drawing depicting the MCC New York SHU

Figure 4.3

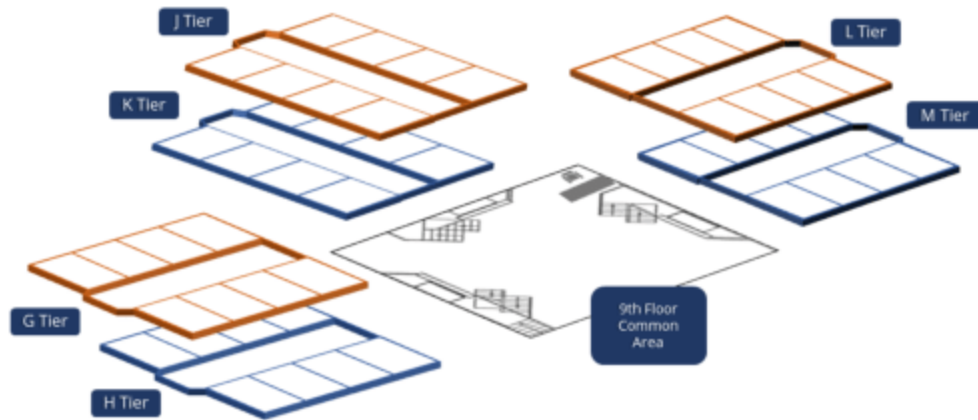
Tiered Structure of SHU (2-Dimensional)



Source: DOJ OIG schematic drawings depicting the MCC New York SHU

Figure 4.4

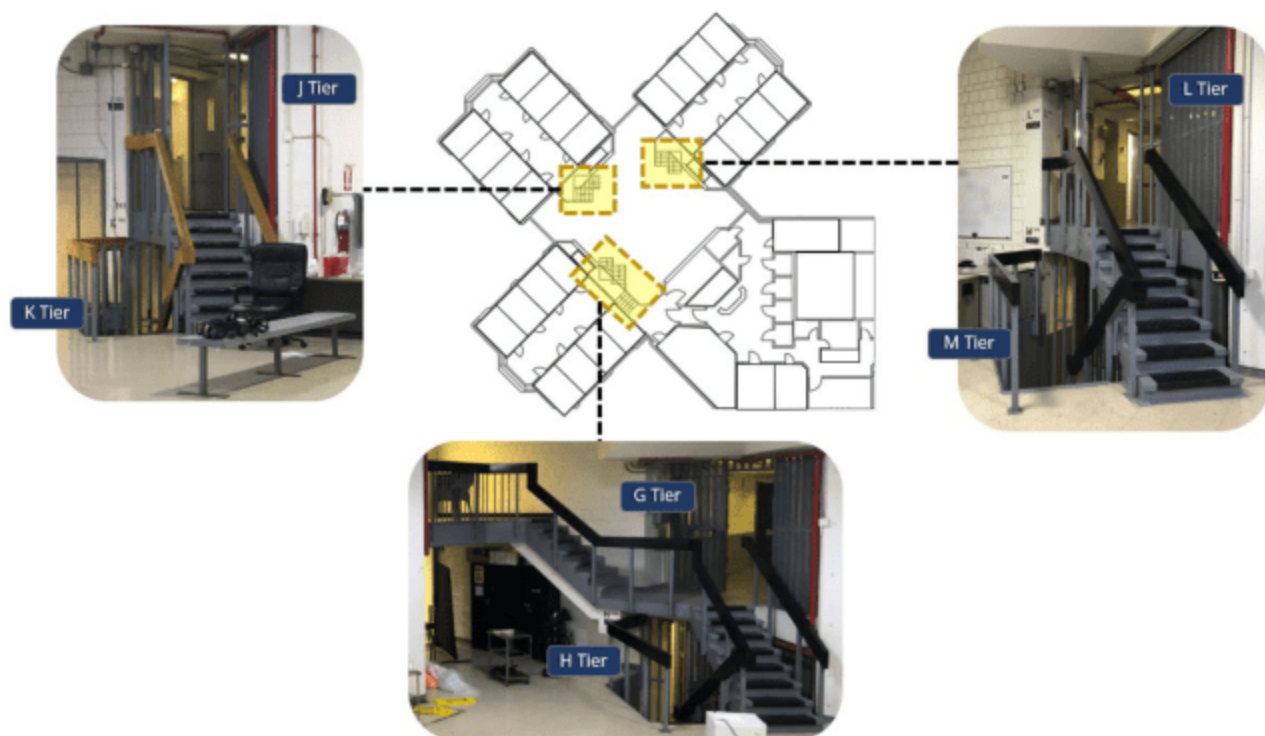
Tiered Structure of SHU (3-Dimensional)



Source: DOJ OIG schematic drawing depicting the MCC New York SHU

Figure 4.5

Stairways Leading to SHU Upper and Lower Tiers



Note: The photograph on the right has been modified for privacy reasons.

Source: DOJ OIG photographs and DOJ OIG schematic drawing depicting the MCC New York SHU

III. Epstein's Initial Cell and Cellmate Assignment from July 7 to July 23

According to the Warden, MCC New York typically housed inmates in the SHU with a cellmate. Upon Epstein's initial transfer to the SHU on July 7, 2019, he was assigned a cell in the M Tier of the SHU with Inmate 1. The Warden explained that Epstein was a high-profile inmate and that he initially selected Inmate 1 to be Epstein's cellmate because Inmate 1 was another high-profile inmate, and the Warden believed Inmate 1 to be the least likely SHU inmate to harm Epstein.²³ Epstein and Inmate 1 were housed together in cell Z05-124.

²³ In 2008, Epstein pleaded guilty in a Florida state court to a felony charge of procurement of minors to engage in prostitution in violation of Florida Statute § 796.03. As a result of this conviction, Epstein was required to register as a sex offender.

IV. Events of July 23 and the Placement of Epstein on Suicide Watch and Psychological Observation from July 23 to July 30

According to BOP documents, at approximately 1:27 a.m. on July 23, 2019, Senior Officer Specialists 1 and 2 heard noise coming from the M Tier in the SHU, the tier where Epstein was housed. Senior Officer Specialist 2 documented in a BOP report that upon checking cell Z05-124, he saw Epstein laying down near his bunk with “a piece of handmade orange cloth” around his neck, and Senior Officer Specialist 1 wrote in a BOP report that Epstein’s cellmate (Inmate 1) said Epstein had attempted to hang himself. In his interview with the OIG, Senior Officer Specialist 1 said that Inmate 1, who appeared shaken up, told him that he had been asleep on the floor of the cell and was awoken when he felt Epstein land on him. Senior Officer Specialist 2 reported that after he had been alerted by the noise, he grabbed the door keys, called the Control Center for assistance, and then he and Senior Officer Specialist 1 entered the cell, where they secured and removed Epstein’s cellmate. Senior Officer Specialist 1 reported that he then reentered the cell, placed Epstein on his side, and removed “an orange homemade rope” from his neck. In his interview with the OIG, Senior Officer Specialist 1 said Epstein had a sheet around his neck, which was attached to the bunkbed ladder in the cell. Senior Officer Specialist 1 said that Epstein was sitting on the floor of the cell with his back against the bunkbed ladder. Senior Officer Specialist 1’s report said that Epstein was breathing, but unresponsive, so he began chest compressions, at which time the Morning Watch Operations Lieutenant and other staff arrived. Senior Officer Specialist 1 confirmed in his OIG interview that they started cardiopulmonary resuscitation but stopped when they realized that Epstein was already breathing. The Morning Watch Operations Lieutenant documented in a BOP report that when she arrived at the SHU, she saw Epstein lying in the fetal position in his cell, breathing heavily and snoring, wearing only a t-shirt and boxers. The Morning Watch Operations Lieutenant observed that Epstein’s neck was red, but she saw no further injuries. She called out to Epstein, who flickered his eyes and continued snoring. The COs unsuccessfully tried to get Epstein to stand on his own, and then placed him on a stretcher and took him to the Health Services Unit.

According to BOP records, at approximately 1:40 a.m., Epstein was transferred out of the SHU and placed on suicide watch. As previously noted in Chapter 2, inmates on suicide watch are housed in a dedicated room, typically in the health services area, where they are continuously monitored by specially trained staff or inmates.

Senior Officer Specialist 3 documented in a BOP report that when he and others responded to the call for assistance and gained access to the SHU, he saw Epstein lying on the floor of his cell snoring. He and the other officers verbally instructed Epstein to stand up, but Epstein did not. He and other officers then lifted Epstein onto a stretcher to remove him from the cell.

Senior Officer Specialist 4 wrote in a BOP report that he responded to a body alarm in the SHU and helped remove Epstein from his cell, placed him on a stretcher, and took him to the second floor for a medical assessment. Senior Officer Specialist 4 further reported that, while he was observing Epstein in the Health Services Unit, Epstein told Senior Officer Specialist 4 that he thought his cellmate had tried to kill him. Epstein further stated that his cellmate had tried to extort him and that for the last week his cellmate had threatened to beat him if he did not pay him. Epstein told Senior Officer Specialist 4 he had not reported this to MCC New York staff, but that he had told his lawyers.

The Morning Watch Operations Lieutenant documented in a BOP report that when she returned to the Health Services Unit, Senior Officer Specialist 4 informed her that Epstein had said that his cellmate had tried to kill Epstein and had been harassing him. The Morning Watch Operations Lieutenant then spoke with the cellmate (Inmate 1), who said he was wearing headphones and was asleep when he felt something hit his legs. Inmate 1 said he called out to Epstein and when Epstein did not answer, he got up, turned on the light, and saw Epstein sitting on the floor, leaning to the side with a string around his neck. Inmate 1 told the Morning Watch Operations Lieutenant that he then called the guards. Inmate 1 provided a similar statement to BOP officials at approximately 2:50 p.m. on July 23, 2019.

The Morning Watch Operations Lieutenant's report notes that she also spoke with Epstein, who told her that he had returned to his cell after an attorney visit at approximately 8 p.m. the previous day, at which time his cellmate was reading the *Daily News* newspaper. Epstein said his cellmate turned to a page of the newspaper that had Epstein's picture and reported that Epstein was worth \$77 million. Epstein told the Morning Watch Operations Lieutenant that he looked at his picture, balled it up, and threw it in the garbage. Epstein further stated that he woke up at approximately 1 a.m. to get a drink of water, returned to his bunk, and the next thing he remembered was that he was snoring and MCC New York staff were inside his cell. When asked about the allegations against his cellmate, Epstein said he had been told that if his cellmate hurt him, MCC New York staff would not care.

Inmate 2, who was housed in the same SHU tier as Epstein on July 23, told the FBI about an incident that occurred in the SHU around 1:20 a.m. to 1:30 a.m. on an unspecified date. Inmate 2 said he was reading a book when he heard an inmate scream and bang on the cell door to get the SHU officers' attention. Inmate 2 said he could only see the cell door and not inside. According to Inmate 2, Senior Officer Specialist 2 responded to the cell and then left and returned with additional officers. The FBI was further told by Inmate 2 that the officers opened the cell door, removed an inmate, placed the inmate in handcuffs, and put the inmate in the shower area. Inmate 2 stated that the officers reentered the cell and Inmate 2 heard a thump as if something had hit the floor. The officers then pulled the other inmate out of the cell, placed him on a stretcher, and took him away. Inmate 2 also told the FBI that, later in the evening, around 2:10 a.m. to 2:15 a.m., the COs returned to the cell where the incident had occurred earlier. He said he further observed the officers clean out the cell and use a video camera to record the inside of the cell. Inmate 2 said he saw the officers remove from the cell orange clothing items that had been tied together. Inmate 2 also said that the first inmate to be removed from the cell later told Inmate 2 that he was sleeping when his cellmate had tried to kill himself by hanging himself from the ladder of the bed.

According to BOP records, medical staff evaluated Epstein at approximately 6:20 a.m. on July 23, 2019, and observed friction marks and superficial reddening of his neck and one knee. The red mark spanned two-thirds of Epstein's neck (front and sides) and was 2 inches wide. Epstein told the medical staff that he did not know what had caused his injuries, and that he went to drink a little water and woke up snoring.

Later that morning, the MCC New York Staff Psychologist conducted a suicide risk assessment and determined that Epstein should remain on suicide watch. During the assessment, Epstein denied any knowledge of how he sustained the marks on his neck. The Staff Psychologist noted in the assessment report that it was unclear whether Epstein had placed the string around his neck or if someone else did. Medical staff examined Epstein at approximately 1:08 p.m. the following day, July 24, 2019, and observed that the central part of the red mark on Epstein's neck had some abrasion. According to BOP records, Epstein told the medical staff that he still did not want to talk about how he sustained his injuries, but he

believed that his cellmate had something to do with it. BOP's Special Investigative Services (SIS) opened an investigation into this incident but was unable to determine whether Epstein harmed himself or had been assaulted.

On July 24, 2019, at approximately 8:45 a.m., Epstein was removed from suicide watch. However, Epstein remained in the same cell that he was placed in the previous day and was under psychological observation until July 30, 2019.²⁴

The MCC New York Chief Psychologist told the OIG that an inmate is placed on suicide watch when the inmate is believed to be imminently suicidal. During suicide watch, the inmate is under constant observation by staff; the cell lights are on 24 hours a day; and the inmate is given a special mattress, blanket, and smock to wear. The Chief Psychologist explained that although psychological observation is a lower classification, at MCC New York the psychological observations were the same as suicide watch except that inmates were allowed to have their clothing and some materials, such as books, as determined by Psychology Department. At MCC New York, psychological observation was used to see how an inmate was doing before releasing the inmate to a housing unit.

The Chief Psychologist told the OIG that the Psychology Department independently makes the decision who goes on and off suicide watch. The Chief Psychologist also stated that the Psychology Department makes recommendations to the institution's management about where inmates are housed when they come off of suicide watch. According to her, the Psychology Department always recommends that inmates coming off of suicide watch be housed with other inmates; however, she said the recommendations cannot always be carried out due to other security factors. When that occurs, the Psychology Department recommends conducting increased rounds and keeping an eye on those inmates.

The Chief Psychologist further told the OIG that, based on a conversation with the BOP's National Suicide Prevention Coordinator from the BOP's Central Office, she passed along to the MCC New York executive staff the recommendation that Epstein be housed with an alleged sex offender in the SHU.²⁵ The Chief Psychologist stated that the MCC New York Warden and Associate Wardens decided who Epstein would be housed with and the Psychology Department was not involved in that decision.

According to BOP records, as a result of the July 23 incident, MCC New York subsequently conducted disciplinary proceedings against Epstein for alleged self-mutilation, but ultimately found that there was insufficient evidence to find that Epstein engaged in a prohibited act. When Epstein was psychologically evaluated on July 30, 2019, in connection with disciplinary proceedings, Epstein said he did not remember how he obtained the marks around his neck. On August 2, 2019, the SIS investigation into the July 23, 2019, incident was completed and found insufficient evidence to support either that Epstein had harmed himself or that he had been harmed by his cellmate.

²⁴ Epstein's BOP medical records reflect that he was removed from psychological observation and returned to the SHU on July 30, 2019.

²⁵ Neither of Epstein's cellmates at MCC New York were alleged to be sex offenders.

Senior Officer Specialist 1 told the OIG that after Epstein came off of suicide watch, Epstein asked if he could be paired up with Inmate 1 again. Senior Officer Specialist 1 told Epstein that his request was something he would need to raise with the Operations Lieutenant. Senior Officer Specialist 1 told the OIG that Epstein replied, "Yeah, but I don't understand, you know, we were bunkies, everything was cool." The Chief Psychologist also told the OIG that Epstein mentioned to her that he wanted Inmate 1 to continue to be his cellmate.

V. The Psychology Department's Post-July 23 Determination that Epstein Needed to Have an Appropriate Cellmate

Following the events of July 23, the MCC New York Psychology Department determined that Epstein needed to be housed with an appropriate cellmate. To ensure Epstein's cellmate requirement was disseminated to MCC New York staff, on July 30, 2019, at 12:30 p.m., the Staff Psychologist sent an email to over 70 MCC New York staff members which read, "Inmate Epstein #76318-054 is being taken off Psych Observation and needs to be housed with an appropriate cellmate." A review of the email recipients showed that the email was sent to, among others, the Warden, Associate Warden 2, the Captain, the SHU Lieutenant, the SIS Lieutenant, the Day Watch Operations Lieutenant, the Evening Watch Operations Lieutenant, the Morning Watch Operations Lieutenant, the Day Watch Activities Lieutenant, and CO 1. The Staff Psychologist also completed a "Post-Watch Report," which stated that the "SHU L[ieutenant] informed inmate Epstein needs to be housed with an appropriate cellmate."

The Warden told the OIG that the Chief Psychologist had advised him that Epstein was not suicidal and was ready to return to the SHU. According to the Warden, when he spoke with the Chief Psychologist regarding Epstein, she told him to assign Epstein a cellmate. He added that MCC New York would typically house an inmate who was previously on suicide watch with a cellmate. The Warden stated there was no BOP policy mandating that an inmate coming off of suicide watch have a cellmate, but they usually housed such an inmate with a cellmate.

During their interviews with the OIG, Associate Warden 1, the Captain, and the SHU Lieutenant each said they had verbally informed the SHU staff of Epstein's cellmate requirement and were confident that all SHU staff members knew of Epstein's cellmate requirement. Additionally, the Captain said he visited the SHU on multiple occasions and directed his staff to be alert and attentive about Epstein's special needs.

According to Associate Warden 1, the Captain was in charge of correctional services, including the SHU. Associate Warden 1 said the Captain should have told the SHU Lieutenant, and that the SHU Lieutenant should have told the SHU staff about the cellmate requirement. Associate Warden 1 further told the OIG that the SHU Lieutenant was responsible for ensuring that everything within the SHU was in compliance. Associate Warden 1 told the OIG that the SHU staff knew that Epstein was required to have a cellmate, and said she personally heard it being discussed on more than one occasion when she would visit the SHU while performing her rounds.

The Captain, who supervised all of the Lieutenants and COs working in MCC New York, said that after the cellmate requirement was issued for Epstein, he spoke with the SHU Lieutenant and directed him to ensure that Epstein had a cellmate. Similar to the Warden, the SHU Lieutenant told the OIG that while there is no BOP policy addressing the necessity of assigning cellmates to individuals coming off of suicide watch, it was

common practice in the BOP for prisoners coming off of suicide watch to be assigned a cellmate. The SHU Lieutenant confirmed that a BOP psychologist told him that Epstein had to be housed with a cellmate when Epstein returned to the SHU and said that he passed the directive down to the SHU staff.

Additionally, the Day Watch SHU Officer in Charge on August 9, 2019, said he and all other SHU staff were aware of Epstein's cellmate requirement. MCC New York Psychology Department personnel told the OIG that MCC New York staff members knew of Epstein's cellmate requirement because it was discussed during staff meetings, department head meetings, SHU meetings, morning meetings, and during required staff training.

Forensic Psychologist 1 told the OIG that on August 9, 2019, she was present during a meeting in which one of Epstein's attorneys opposed Epstein having a cellmate. Forensic Psychologist 1 said she explained to the attorney that Epstein needed to have a cellmate because he was housed in the SHU and he was a sex offender.

VI. Selection of Epstein's Cellmate After Psychological Observation

The Captain told the OIG that he compiled a list of possible cellmates for Epstein, vetted those inmates, and provided the list of names to the MCC New York Warden. The Warden told the OIG that he identified two potential cellmates and tentatively decided on Inmate 3. The Warden said he passed this information on to the BOP Director's Chief of Staff and later received word that he should assign Inmate 3 to be Epstein's cellmate.

The Warden told the OIG that no inmates were pre-vetted to replace Inmate 3 if he left MCC New York. The Warden and the Captain told the OIG that if Inmate 3 had been removed as Epstein's cellmate, they would have had to review a new list of potential cellmate candidates to ensure that Epstein was housed with an appropriate inmate. According to the Warden and the Captain, if Inmate 3 was no longer detained at MCC New York, SHU staff should have informed a Lieutenant on duty, who should have informed the Captain, who would have ensured that the process of selecting a new cellmate for Epstein would begin.

VII. Epstein's Cell Assignment from July 30 to August 10

As a result of Epstein's cellmate requirement, on July 30, 2019, following his release from psychological observation, Epstein was initially assigned to cell Z04-206 with Inmate 3 in the J Tier of the SHU.²⁶ A BOP

²⁶ SENTRY, which is BOP's database of information relating to the care, classification, subsistence, protection, discipline, and programs of inmates, inaccurately reflected that this move from his psychological observation cell to the SHU occurred the previous day (July 29, 2019). The investigation revealed that Epstein was originally scheduled to return to the SHU on July 29, 2019, but, at his request, he remained on psychological observation until July 30, 2019.

SENTRY was not updated to reflect either the actual date of Epstein's transfer back into the SHU or the cell to which he and Inmate 3 were assigned after the initial cell change necessitated by the electrical needs of Epstein's medical device. The administrative error in BOP's SENTRY records regarding Epstein's cell assignment had no effect on the events the OIG investigated and reviewed.

According to OIG interviews with MCC New York staff members, it does not appear that there were any checks to ensure

Continued

medical record note reflected that, on this same date, Epstein was provided with his personally-owned medical device. BOP witnesses told the OIG that on that same date, Epstein and Inmate 3 were moved to cell Z06-220 in the L Tier of the SHU to accommodate the electrical needs of Epstein's medical device. Of all the cells in the SHU, cell Z06-220 was the closest cell with a direct line of sight to the SHU Officers' Station in the common area of the SHU, which was approximately 15 feet away.

Inmate 3 told the OIG that when he and Epstein were first assigned as cellmates in cell Z06-220 in the L Tier, the Day Watch Operations Lieutenant told Inmate 3 that he had a "cool bunkie" for him, an "old guy" who would not bother Inmate 3. Inmate 3 said he told the Day Watch Operations Lieutenant that he slept on the bottom bunk, and the Day Watch Operations Lieutenant said that would not be a problem because his new cellmate slept on the floor. Inmate 3 said he was surprised by this response because he understood that sleeping on the floor was not allowed and he had previously been disciplined for doing so.

When Epstein arrived in the cell, Inmate 3 recognized him and said he (Inmate 3) told the Day Watch Operations Lieutenant that the Day Watch Operations Lieutenant had "jammed up" Inmate 3. Inmate 3 said he knew Epstein had tried to hang himself and had just come from suicide watch. According to Inmate 3, the Day Watch Operations Lieutenant told Inmate 3 not to worry, that Epstein was okay, and that Inmate 3 should keep an eye on him. Inmate 3 asked the Day Watch Operations Lieutenant if he was supposed to serve as a suicide prevention advocate, that is, an inmate who is assigned to the suicide watch area. Inmate 3 said the Day Watch Operations Lieutenant laughed and brushed off Inmate 3's comment.

According to Inmate 3, COs brought two mattresses to the cell for Epstein and placed them on the floor. Epstein put the mattresses on the right side of the cell, which is only partially visible through the cell door window when the cell door is closed. Inmate 3 noted that Epstein also had two extra blankets, which Inmate 3 said was also unusual because none of the inmates had extra blankets.

Inmate 3 said he asked Epstein to please not kill himself or hang himself while Inmate 3 was his cellmate because Inmate 3 had a chance to go home soon. Epstein told Inmate 3 not to worry and that he was not going to cause Inmate 3 any trouble.

that inmates were physically located in the cells to which they were assigned in SENTRY. Associate Warden 1 told the OIG that the error would have been identified if SHU staff members had conducted a bed-book count, but there was no requirement to do a bed-book count every certain number of days. Associate Warden 1 explained that during a bed-book count, the staff members have a roster with them while conducting the count of inmates assigned to their housing unit to ensure all inmates are accounted for and in their assigned cells. The OIG's investigation revealed that these and other cell assignment and recordkeeping errors would have been uncovered had MCC New York SHU staff been undertaking inmate accountability measures, such as rounds, counts, census checks, and bed-book checks.

Figure 4.6

SHU L Tier



Sources: DOJ OIG schematic drawing depicting the MCC New York SHU; and photograph taken by the Office of the Chief Medical Examiner, City of New York (OCME)

Figure 4.7

Exterior Views of Epstein's Cell

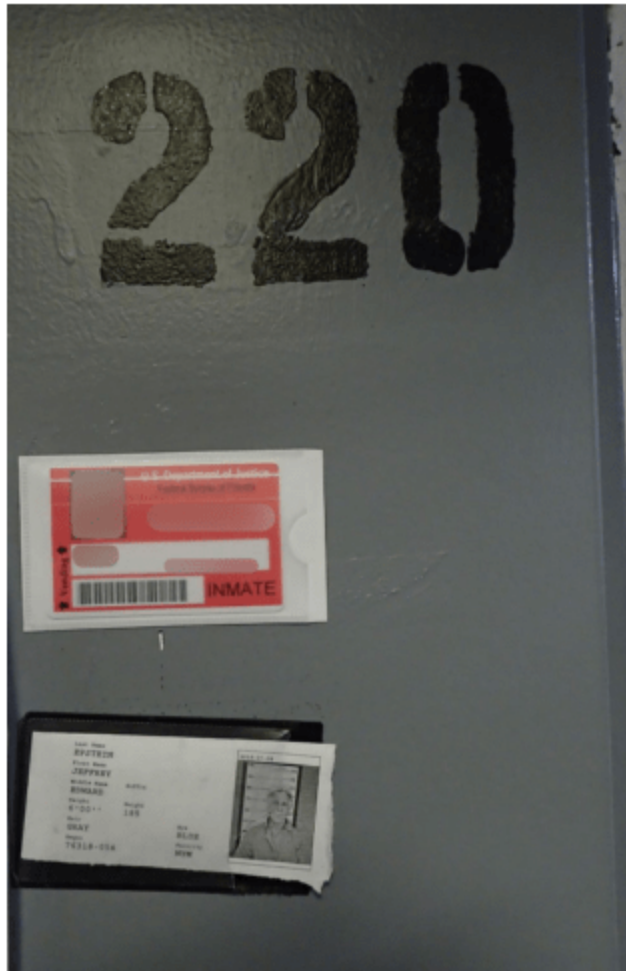


Note: Both photographs have been modified for security reasons and the left photograph has been modified for privacy reasons.

Sources: DOJ OIG schematic drawing depicting the MCC New York SHU; OCME photographs

Figure 4.8

The Door to the Cell Occupied by Epstein and Inmate 3 from July 30 to August 9



Note: The photograph has been modified for privacy reasons.

Source: OCME

Figure 4.9

View of Epstein's Empty Cell from Cell Door Window



Source: DOJ OIG photograph and DOJ OIG schematic drawing depicting the MCC New York SHU

Figure 4.10

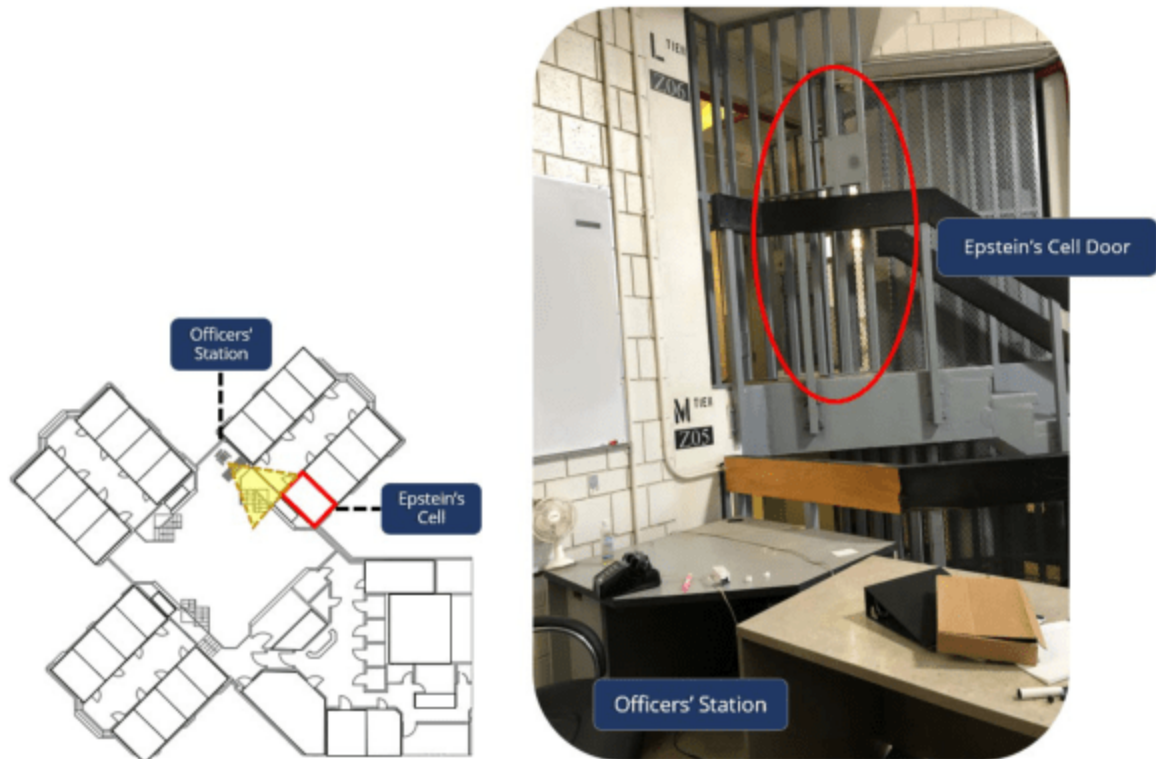
Interior View of Epstein's Empty Cell from Just Inside the Cell Door



Source: DOJ OIG photograph and DOJ OIG schematic drawing depicting the MCC New York SHU

Figure 4.11

View of Epstein's Cell Door from the SHU Officers' Station



Note: The photograph has been modified for security and privacy reasons.

Source: DOJ OIG photograph and DOJ OIG schematic drawing depicting the MCC New York SHU

Figure 4.12

View of the SHU Officers' Station from Epstein's cell



Note: The photograph has been modified for security reasons.

Source: DOJ OIG photograph and DOJ OIG schematic drawing depicting the MCC New York SHU

VIII. Psychological Evaluations of Epstein from July 6 to August 9

During Epstein's detention at MCC New York, a variety of medical professionals, including a Medical Doctor, a Clinical Nurse, and Physician Assistant 1, who is a Mid-Level Practitioner, conducted multiple medical appointments with Epstein, and Epstein was prescribed a variety of medications for various ailments and health needs. Epstein was also given an eye and dental exam, as well as a blood panel screening. This section details Epstein's psychological evaluations while he was in MCC New York custody prior to his death.

On Saturday, July 6, 2019, at 9:38 p.m., upon Epstein's intake into MCC New York, he was medically screened by Physician Assistant 2. The screening included taking vital signs and asking various medical history questions, including questions related to Epstein's mental health. Among other things, Physician Assistant 2 annotated that Epstein did not have current suicidal ideation and had denied having a history of suicide attempts. Physician Assistant 2 instructed Epstein how he could obtain medical, dental, and mental health care.

At 2:58 a.m. on Sunday, July 7, 2019, a Facilities Assistant emailed the Psychology Department asking that someone evaluate Epstein because he appeared "distracted, sad, and a little confused."

On July 8, 2019, Forensic Psychologist 1 of the Psychology Department conducted an Intake Screening of Epstein that included a self-report, staff observation, and a review of information in SENTRY. Forensic

Psychologist 1 noted that during Physician Assistant 1's initial intake evaluation, on the intake questionnaire, Epstein denied having a history of mental health treatment and any history of mental health symptoms. Additionally, Forensic Psychologist 1 noted no suicidal ideations, attempts, or self-harm; no history of substance abuse or treatment; and no sexual offense convictions.

During the evaluation, Epstein stated he had been previously incarcerated for 3 months for "prostitution," and that he was currently charged with sex trafficking. Epstein denied recent or present morbid thoughts and denied passive or active suicidal ideation. It was noted in BOP records that Epstein's verbalizations were future-oriented and did not have indications of helpless or hopeless thinking.

According to Forensic Psychologist 1, Epstein did not meet the criteria for any psychological diagnosis and was designated as Mental Health Care Code 1. This is indicative of an inmate who does not show any significant level of functional impairment associated with a mental illness and does not demonstrate a need for regular mental health intervention. Epstein was educated on emergency procedures for contacting the Psychology Department staff, and Epstein agreed to contact staff if he needed Psychology Department services in the future.

The MCC New York Chief Psychologist told the OIG that based on the Psychological Services Intake Questionnaire, inmates have four different Care Code ratings.²⁷ Code 1 means there are no concerns about the inmate's mental health status; they have no needs and will not be followed up with unless requested by staff or the inmates. Code 2 means there is some history of mental health issues, but the inmate has them under control and the Psychology Department will follow up monthly. Code 3 is more severe, requiring weekly visits by the Psychology Department to ensure the inmate is stable and if unstable would be moved to observation. Code 4 inmates are seen daily by the Psychology Department and are under constant psychological observation. The Chief Psychologist stated that a Code 1 inmate can be on suicide watch. Suicide watch is for inmates who are showing immediate and exigent signs of being suicidal.

Subsequent to the intake screening, on July 8, 2019, the Chief Psychologist consulted with the National Suicide Prevention Coordinator from the BOP's Central Office, regarding the various risk factors associated with Epstein for suicidality. These risk factors were that Epstein was involved in a high-profile case with media attention, had been charged with sex offenses, was on pretrial status, and there was the potential for bad news from a court proceeding that day. A determination was made that upon Epstein's return from court, staff were to notify the psychologist and place Epstein on a "watch status" until a thorough suicide risk assessment could be conducted.

When Epstein returned from court on July 8, 2019, it was after duty hours and MCC New York staff contacted the Psychology Department and informed them that Epstein denied suicidality. However, for precautionary reasons, Epstein was placed on psychological observation status until Psychology Department staff could conduct a suicide risk assessment the following day. During Epstein's period of psychological observation, inmate companions continuously observed him and kept a log that detailed Epstein's activities in 15-minute increments. Under BOP policy, on a case-by-case basis, the Warden may authorize such an inmate

²⁷ Upon reviewing a draft of this report, the Chief Psychologist noted that mental health care is classified into "levels," not "codes."

companion program at an institution to utilize inmate observers, who are selected, trained, and supervised by the institution's Suicide Prevention Program Coordinator.

On July 9, 2019, the Chief Psychologist conducted a suicide assessment of Epstein. She reviewed Epstein's medical record and interviewed him, which revealed that he possessed some risk factors for suicidality. Epstein denied having any past or present suicidal ideation, intention, or plan, and also denied having any history of mental health treatment or any current mental health symptoms. The Chief Psychologist's assessment was that Epstein had "protective" factors present that could decrease his risk of suicide. The Chief Psychologist assessed factors that included his willingness to engage in treatment, view of death as negative, future orientation, and the fact that he adamantly denied any suicidal ideation, intention, or plan. The Chief Psychologist's assessment was that Epstein had numerous protective factors that outweighed his risk factors for suicidality and that he had a positive outlook regarding his legal case. Epstein remained on psychological observation pending a suitable cell assignment, and the Chief Psychologist noted that a suicide watch was not warranted at the time of her report.

On July 10, 2019, the Chief Psychologist met with Epstein for a psychological observation and noted that, according to the psychological observation logbook, Epstein had been eating his meals, sleeping, and interacting with other inmates. During this meeting with the Chief Psychologist, Epstein voiced concerns over being housed in the SHU. Epstein asked the Chief Psychologist to be "single-celled" if he were to be housed in the SHU and had also requested a shower, his property, pen, and paper. The Chief Psychologist stated Epstein had been provided a shower on this date. She provided Epstein with coping skills strategies, to which he was receptive. Epstein continued to deny any suicidal ideation, intention, or plan; and Epstein stated he was looking forward to his upcoming court hearing regarding pretrial release. The Chief Psychologist's assessment was that Epstein was psychologically stable at the time and that he could be released from the psychological observation area. She noted that Epstein would be housed in the SHU with a cellmate and would be seen the following morning to evaluate his mental status and stability. Following this July 10 assessment, Epstein was taken off of psychological observation and returned to the SHU with documented recommendations for a cellmate and next-day contact by the Psychology Department.

The following day, July 11, 2019, the Staff Psychologist attempted to see Epstein in the morning and afternoon, but he was meeting with his attorneys. Since the Staff Psychologist was unable to meet with Epstein, the Chief Psychologist met with Epstein in the attorney conference area for a psychological observation follow-up. During this meeting, Epstein expressed concerns about a number of issues, including not yet receiving his property, not having enough water during his attorney conference, and a desire to attend recreation. Epstein was upset about having to wear an orange uniform and the Chief Psychologist explained the orange uniform was because he was being housed in the SHU. During this clinical contact, the Chief Psychologist provided Epstein with additional coping strategies, to which he was receptive. Additionally, Epstein was educated about routine and emergency procedures for contacting the Psychology Department staff and reminded of self-help books and audiotapes available through the Psychology Department. Epstein continued to deny any suicidal ideation, intention, or plan and was

scheduled to be seen again the following week. The Chief Psychologist told the OIG that Epstein and his attorney mocked her for thinking Epstein was suicidal.²⁸

On July 16, 2019, at Epstein's request, the Chief Psychologist met with Epstein during his attorney conference. The Chief Psychologist noted that Epstein did not have any psychological concerns and denied suicidality. The Chief Psychologist noted that she provided Epstein with psychoeducation regarding additional coping strategies. Epstein was educated about routine and emergency procedures to contact Psychology Department staff and reminded of self-help books and audiotapes that are available to him. The Chief Psychologist noted in her clinical contact report that there was no need for follow-up and that Epstein would be seen in the SHU for rounds and monthly SHU reviews.

According to the BOP After Action Review submitted by the Southeast Regional Director, the Chief Psychologist's meeting with Epstein on July 16, 2019, at Epstein's request during his attorney conference was inappropriate. The Southeast Regional Director wrote in the report that Epstein attempted to "bring his attorneys into the fray regarding the mental health treatment being provided by the institution." In the After Action Review, the Southeast Regional Director wrote that it was not typical for the BOP to provide psychological intervention in the presence of others, nor was it appropriate for a BOP psychologist to meet with an inmate's attorney. When asked by the OIG about these findings, the Chief Psychologist stated that the intention was to check on Epstein, not to breach any security.

On July 18, 2019, the Chief Psychologist conducted a monthly SHU review and noted that Epstein was unavailable due to a meeting with his legal team and that she would attempt to interview Epstein in the near future to complete his monthly review.

As noted previously, at approximately 1:27 a.m. on July 23, 2019, Epstein was found lying on the floor of his cell with a piece of homemade orange cloth around his neck. The Chief Psychologist made a general administrative note in Epstein's file that she was contacted by the Operations Lieutenant at approximately 2 a.m., and informed that Epstein was being placed on suicide watch after he was found with a string loosely hanging around his neck. That morning, Physician Assistant 1 assessed Epstein for injuries and noted in BOP records that Epstein was cooperative, alert, and oriented. According to BOP's medical records, Epstein did not appear distressed and was smiling during the clinical assessment. Epstein said he did not know what had happened and could not explain the mark on his neck. Physician Assistant 1 noted that Epstein had a circular line of erythema, i.e., superficial redness on the skin, that was 2 inches wide and spanned two-thirds of the way around the front and sides of the base of his neck. According to the BOP report, one section of the erythema (or redness) in the front of his neck had marks of friction, and there was no inflammation, deformities, hematomas, lacerations, or tenderness. The BOP report stated that Epstein was able to move his neck without any restriction and denied having any pain, discomfort, or respiratory problems. Physician Assistant 1 further noted there was another small erythema (or redness) on Epstein's left knee about 2 centimeters in diameter, which was noted as mild. Physician Assistant 1's assessment was that the injury was unspecified and was self-inflicted.

²⁸ Upon reviewing a draft of this report, the Chief Psychologist noted that Epstein's attorneys were not "mocking" her; the attorneys and Epstein were simply laughing at the fact that she was inquiring as to whether Epstein was suicidal and dismissing the possibility that Epstein could be suicidal.

Also on July 23, 2019, the Staff Psychologist conducted a suicide risk assessment that included a clinical interview of Epstein and a review of Epstein's medical record, the psychology data system, and a review of the SENTRY database. According to the Staff Psychologist's report, Epstein denied knowing why he was placed on suicide watch. BOP records state that Epstein recalled getting a drink of water the night prior and then went back to bed. Epstein's next recollection was hearing himself snoring. The BOP assessment records reflect that Epstein wanted to know why he was on suicide watch and he was informed that he had been found with a string on his neck. The Staff Psychologist noted that it was unclear whether Epstein had placed the string around his neck or if someone else did. Epstein denied current suicidal or self-harm thoughts or ever having these thoughts; denied a history of self-harm and suicide attempts; and denied feeling hopeless and fearing for his safety. Epstein told the Staff Psychologist that he lived to enjoy life and that his future plans included fighting his criminal case and getting back to his normal life. The Staff Psychologist noted that Epstein was to remain on suicide watch for further observation. The Staff Psychologist told the OIG she had advised BOP staff that Epstein would need a cellmate.

The Chief Psychologist said she considered three possibilities to explain the July 23 incident: (1) Epstein and/or Inmate 1 were gaming the system to get something they wanted that they were not getting; (2) Epstein, who really was suicidal, had conducted a rehearsal; or (3) Inmate 1 had assaulted Epstein. The Chief Psychologist told the OIG that after Epstein told her he wanted to be housed with the same cellmate he originally said had assaulted him, she began to think that the third possibility (assault by Inmate 1) was less plausible than the other two possibilities, although she did not know for certain.

The following day, July 24, medical staff examined Epstein at approximately 1:08 p.m., and observed that the central part of the red mark on Epstein's neck had some abrasion. Epstein told the medical staff that he still did not want to talk about how he sustained his injuries, but he believed that his cellmate had something to do with it. BOP's SIS opened an investigation into this incident but was unable to determine whether Epstein had harmed himself or had been assaulted.

On July 24, 2019, after 31 hours and 5 minutes, Epstein was removed from suicide watch. Epstein remained in the same cell that he was in under suicide watch and was under psychological observation until July 30, 2019.²⁹ Also on July 24, 2019, Forensic Psychologist 2 completed a Post Suicide Watch Report. According to Forensic Psychologist 2's report, Epstein continued to claim a lack of memory regarding how he sustained the scar around his neck. The BOP report further stated that Epstein adamantly denied suicidal ideation, intentions, and plans, that Epstein identified reasons to live and was future-oriented, and that Epstein was assessed for a willingness to engage in treatment. The BOP report reflected that Forensic Psychologist 2 inquired further if Epstein could recall the previous day's incident and Epstein stated that he had been trying to remember. Forensic Psychologist 2 asked Epstein why he told another inmate that Epstein's cellmate had tried to kill him but was now claiming he has no memory of the incident. Epstein told Forensic Psychologist 2 that he did not recall himself or his cellmate tying a string or rope around his neck.

Following Forensic Psychologist 2's examination of Epstein, she determined that he should be removed from suicide watch. Forensic Psychologist 2 told the FBI that she discussed the decision to step Epstein down to psychological observation from suicide watch with the Chief Psychologist and Associate Warden 2, who both

²⁹ Epstein's BOP medical records reflect that he was removed from psychological observation and returned to the SHU on July 30, 2019; however, SENTRY inaccurately reflects that Epstein was transferred back to the SHU on July 29, 2019.

concurred with her determination. Epstein was therefore taken off suicide watch and placed on psychological observation, during which time BOP records reflect that he was continuously observed by inmate companions and seen daily by Psychology Department staff. Forensic Psychologist 2 annotated in the Post Suicide Watch Report that the reason for removing Epstein from suicide watch was due to Epstein stating he had no interest in killing himself; he had described having a wonderful life; and Epstein had said it would be crazy to take his own life and he would not do that to himself. Forensic Psychologist 2 told the FBI that following her clinical visit with Epstein on July 24, 2019, she was cautious with Epstein's case and his self-reporting of what had occurred the previous day. Forensic Psychologist 2 stated that she observed signs of positivity and that Epstein "adamantly denied suicide." Nevertheless, she was not comfortable taking Epstein off suicide watch and instead opted to place Epstein on psychological observation, which was a step down from suicide watch. Forensic Psychologist 2 told the FBI that "I made the decision with the consent" of the Chief Psychologist and Associate Warden 2, with whom she had consulted. Forensic Psychologist 2 told the FBI that placing Epstein on psychological observation allowed him to possess hygiene products, two novels, attend legal visits, and take showers. It also allowed him to have standard inmate clothing, a flex pen, a toothbrush and toothpaste, soap, and deodorant. However, Forensic Psychologist 2 explained that it was not healthy for inmates to stay on suicide watch for extended periods of time and they are re-evaluated on a day-to-day basis.

According to Forensic Psychologist 2's Post Suicide Watch Report, Epstein expressed a feeling of safety being housed in the psychological observation area rather than the SHU and asked if there was a safer unit for him to be housed. Forensic Psychologist 2 informed Epstein that he would remain on psychological observation for the near future, but his long-term housing would need to be revisited because it is not ideal to remain in psychological observation for extended periods of time. The BOP report states that Epstein was again educated on routine and emergency procedures for contacting Psychology Department staff.

According to BOP records, between July 25-29, 2019, Epstein was seen daily by the Chief Psychologist or the Staff Psychologist while he was on psychological observation. On each of these dates, according to BOP reports, Epstein adamantly denied any suicidality and denied having any memory of what occurred on July 23, 2019, which resulted in him being placed on suicide watch. Additionally, on each date, Epstein was provided with supportive and coping skill interventions to which he was receptive. BOP records state that Epstein expressed concerns about being housed again in the SHU because he felt it was dangerous; he could not sleep well due to noise from other inmates; and it was difficult for him to work on his legal case. The Chief Psychologist told the FBI and the OIG that she met with Epstein on July 25, 2019, and he was in good spirits. She said that during this clinical visit, Epstein said he was baffled over the July 23, 2019 incident and asked the Chief Psychologist to give him some cues to help him remember. The Chief Psychologist told the OIG that she kept Epstein on psychological observation because he had not answered her questions regarding the possible suicide attempt. The Chief Psychologist told the OIG that she coordinated with the BOP's National Suicide Prevention Coordinator, who recommended that Epstein be housed with a sex offender in the SHU. The Chief Psychologist notified Associate Warden 2 of this recommendation via email. BOP records further reflect that, during his clinical visit on July 28, 2019, Epstein told the Staff Psychologist that he was agitated for hours the previous night because of a non-stop toilet flushing and that the noise was similar to when he was housed in the SHU. The Staff Psychologist informed Epstein that he would be moving to a different cell.

On July 29, 2019, according to BOP records, Epstein reported to the Chief Psychologist that his memory of the July 23, 2019 incident may be impaired because of his sleep apnea. On this date, Epstein was to receive

his personally owned medical device. BOP records state that Epstein was aware he would be returning to the SHU but reported that he did not feel well due to lack of sleep and other medical concerns. Epstein asked to stay on psychological observation, where he felt safe, for one more night to get some sleep and then return to the SHU with a cellmate the following day. According to BOP records, the Chief Psychologist informed Epstein that he could stay 1 more night and explained that there were no mental health issues precluding him from returning to the SHU the following day. The Chief Psychologist explained to Epstein that he would be placed in a safe situation in the SHU. Epstein again was provided supportive interventions and psychoeducation regarding additional coping strategies. BOP records state that Epstein was somewhat receptive but more concerned with getting phone calls, recreation, and housing placement concerns.

On July 30, 2019, according to BOP records, Epstein reported to the Staff Psychologist that he had not slept well, and Epstein discussed how he did not think he would be able to sleep well in the SHU because of the noise. The Staff Psychologist annotated in the clinical contact summary that documentation revealed Epstein had eaten and taken a shower the day prior (July 29) and also had eaten breakfast on July 30. The Staff Psychologist annotated, Epstein did not display indications of disturbed thought process or content and denied current suicidal or self-harm ideation. BOP records further stated that Epstein agreed to immediately report to staff if he began to have suicidal or self-harm thoughts and that Epstein was future-oriented and did not appear to be a danger to himself. The Staff Psychologist noted in her clinical contact report that she had consulted with the Chief Psychologist and that psychological observation of Epstein would be discontinued. According to her clinical contact report, the Staff Psychologist educated Epstein about routine and emergency procedures for contacting Psychology Department staff and noted that Epstein would be seen the following day to monitor his mental status and provide further intervention if needed. The Staff Psychologist also noted in her report that the SHU Lieutenant was informed that Epstein needed to be housed with an appropriate cellmate.

Also on July 30, 2019, the Staff Psychologist completed an evaluation of competency related to Epstein being able to proceed with the disciplinary process. Epstein had been charged by BOP with a prohibited act, specifically tattooing or self-mutilation, for the incident that occurred on July 23, 2019. In conducting the evaluation of competency, the Staff Psychologist reviewed the suicide risk assessment completed by the Chief Psychologist on July 9, 2019, in which Epstein had denied a history of mental health treatment and having any past or present suicidal ideation, intention, or plan. The Staff Psychologist also reviewed the suicide risk assessment that she herself completed, dated July 23, 2019, which stated that it was unclear at the time if Epstein had placed the string around his neck or if it was done by someone else. According to the Staff Psychologist's notes from her competency evaluation on July 30, the determination of an inmate's competency to proceed with the disciplinary process was based on a clinical assessment of the inmate's ability to understand the nature of the proceedings and his or her ability to assist in his or her own defense. After a review of available psychological and psychiatric records and information related to the offense, the Staff Psychologist found that Epstein was competent to proceed with the disciplinary process.

That same day, July 30, Epstein was removed from psychological observation and transferred back to the SHU, consistent with what he had been told by the Chief Psychologist the prior day.

On July 31, 2019, according to BOP records, Forensic Psychologist 3 conducted a clinical visit with Epstein and noted that he was in a pleasant mood, generally slept well, and was getting readjusted to being in the SHU. Epstein told Forensic Psychologist 3 that he was getting along with his cellmate. According to her report, Epstein explicitly denied recent and current suicidal ideation or intent and denied having thoughts of

harming others. Epstein also agreed to contact staff immediately if he experienced any suicidal thoughts or psychological distress. Forensic Psychologist 3's report further stated that Epstein was receptive to her utilization of cognitive behavioral therapeutic techniques. She wrote that there did not appear to be a need for follow-up at the time and Epstein expressed a willingness to self-refer to Psychology Department staff if needed. According to the report, Epstein would continue to be seen during routine SHU rounds and SHU reviews.

On August 1, 2019, according to BOP records, BOP Receiving and Discharge staff, who are responsible for processing inmates who enter or leave the facility, notified the Staff Psychologist that the previous day when the U.S. Marshals Service (USMS) had brought Epstein back to MCC New York from court, they had provided a form on which it was noted that Epstein had "suicidal tendencies." The OIG reviewed the USMS Prisoner Schedule Report for July 31, 2019, as well as the USMS Prisoner Custody Alert Notice that had annotated in the remarks that Epstein had "Mental Concerns: Suicidal Tendencies." The Chief Psychologist told the OIG that the USMS annotates suicidal tendencies for many inmates if the USMS was aware the inmate was previously on suicide watch. Therefore, the Chief Psychologist said the annotation was not abnormal since Epstein had just come off suicide watch and Epstein may have told the USMS that he had been on suicide watch.

Following receipt of this information from the Receiving and Discharge staff, the Staff Psychologist conducted a suicide risk assessment on August 1 that included a review of Epstein's previous clinical encounters, medical records, and data in the Psychology Department and SENTRY systems. According to the Staff Psychologist's assessment, Epstein denied stating he was suicidal and was surprised that the form noted that he had suicidal tendencies. The Staff Psychologist said that Epstein told her that the incident report he received for the marks on his neck arising from the July 23 event had been expunged. The OIG confirmed that the incident report was expunged. Epstein also said his cellmate talked at night and kept Epstein awake but that Epstein wanted to give it 3 to 4 more days before determining if he wanted another cellmate. The Staff Psychologist concluded in her report that Epstein did not appear to be a danger to himself and denied current suicidal or self-harm ideation and agreed to immediately inform staff if he had any of these thoughts. Epstein told her that he had social supports in the community and that he had reasons to live and positive future plans. The Staff Psychologist noted that Epstein was currently psychologically stable and that suicide watch was not indicated at the time. The Staff Psychologist concluded that Epstein's overall acute suicide risk was low, and the overall chronic suicide risk was absent. Epstein was again provided supportive and educative interventions and educated about routine and emergency procedures for contacting Psychology Department staff. The Staff Psychologist's report noted that Epstein would continue to be seen during routine SHU rounds and SHU reviews and that he would be seen by Psychology Department staff the following week to monitor his mental status and provide further intervention, if needed.

On August 8, 2019, the Chief Psychologist conducted a clinical follow-up session with Epstein. According to her report, Epstein described his sleep as fair and requested that he be placed in general population. The report further stated that Epstein denied feelings of depression, anxiety, and any suicidal ideation, intention, or plan. Epstein told the Chief Psychologist that he received the necessary documentation to make phone calls and asked if his previous phone calls over the speaker phone counted as his monthly phone contact. The Chief Psychologist stated in her report that Epstein had no mental health concerns and did not appear to be in any distress. The Chief Psychologist wrote that SHU staff had not reported any unusual behaviors related to Epstein. She provided Epstein with supportive interventions and

psychoeducation regarding additional coping strategies, to which Epstein was receptive. Epstein was educated on routine and emergency procedures for contacting Psychology Department staff and also reminded of self-help books and audiotapes that are available to him. The Chief Psychologist wrote that Epstein would be seen in weekly SHU rounds and monthly for SHU reviews. The Chief Psychologist told the OIG that the fact that Epstein underwent three suicide risk assessments was unusual.³⁰

³⁰ Upon reviewing a draft of this report, the Chief Psychologist noted that it was not unusual for someone with static risk factors like Epstein to have received multiple suicide risk assessments. According to the Chief Psychologist upon reviewing a draft of this report, what was unusual was the fact that Epstein was in attorney conference “day and night on a daily basis due to his financial resources.” She noted that it was difficult for Psychology Department staff to interview Epstein because he had a right to his attorney visits, which would last throughout the working day.

Chapter 5: The Events of August 8–10, 2019, and Epstein’s Death

I. Epstein Signs a New Last Will and Testament on August 8

In the weeks following Epstein’s death, multiple media outlets reported that Epstein signed a new Last Will and Testament on August 8, 2019. At least one media organization published a copy of the notarized document showing that it was signed by Epstein and two of his attorneys and notarized on August 8, 2019. Attorney visitor logs from the Metropolitan Correctional Center in New York, New York (MCC New York) confirmed that those attorneys and the notary public visited Epstein on that date. The Office of the Inspector General (OIG) confirmed via court records that the August 8, 2019 will and other probate-related documents were filed in the Superior Court of the Virgin Islands on August 15, 2019. Among the court filings was an affidavit from another attorney who stated that she received the August 8, 2019 will from Epstein. The OIG confirmed via attorney visitor logs that this attorney also visited Epstein at MCC New York on August 8, 2019. The OIG’s investigation and review revealed that MCC New York personnel were unaware that Epstein had changed his will 2 days before he died.

The Chief Psychologist said she had heard that Epstein had changed his will from media reporting following his death. The Chief Psychologist did not know if the media reporting was accurate, but she thought that if it were true, it would have been useful information to know because it would have been a red flag. The Staff Psychologist and the Chief Psychologist told the OIG that if Epstein’s attorneys had notified them or the Psychology Department that Epstein had changed his will, such information would have been a factor warranting a review of Epstein’s mental state and Epstein probably would have been placed back on suicide watch or some type of observation.

II. Court Order on August 9 Releasing Epstein-Related Documents in Pending Civil Litigation

On August 9, 2019, the U.S. Court of Appeals for the Second Circuit ordered the unsealing of the summary judgment filings from a defamation lawsuit filed by [REDACTED] a woman who alleged that Epstein had victimized her when she was a teenager, against Ghislaine Maxwell.³¹ As a result of the court’s order, that same day approximately 2,000 pages of documents were released into the public domain, which contained considerable derogatory information about Epstein and some may have related to the criminal charges pending against him. Additional high-profile public figures were also named in the released documents. There was significant media coverage of information contained within the unsealed court filings.

³¹ Maxwell was subsequently indicted and, in December 2021, convicted of conspiring with Epstein to sexually abuse minors.

III. Transfer of Epstein's Cellmate on August 9 to Another Institution and Failure to Replace Him with Another Inmate

A. Notice on August 8 of the Impending Transfer of Epstein's Cellmate on August 9

As noted above, since July 30, consistent with the Psychology Department's determination that Epstein needed to have a cellmate, Epstein had been housed with Inmate 3, whom the Warden and the Federal Bureau of Prisons (BOP) executive leadership had selected as an appropriate cellmate. At 10:33 a.m. on August 8, 2019, the U.S. Marshals Service (USMS) sent an email to MCC New York personnel assigned to Receiving and Discharge, the area within the Correctional Services Department that is responsible for processing inmates who enter or leave the facility, with the subject "Transfer of Prisoners from NYM [MCC New York] to GEO."³² The body of the email identified Inmate 3 as one of the prisoners to be transferred and further stated, "Please schedule the transfer for Friday 8/9/19."

At 3:36 p.m. on the same day, the USMS sent a second email to a number of MCC New York personnel, including Associate Warden 2, the Captain, the SHU Lieutenant, the Day Watch Operations Lieutenant, the Day Watch Activities Lieutenant, the Evening Watch Operations Lieutenant, another Lieutenant, and the Special Investigative Services Lieutenant, with the subject "Prisoner Production 08-09-2019." This email contained two attachments, one of which was the Prisoner Schedule Report for MCC New York for August 9, 2019. The first page of this attachment reflects that Inmate 3 was scheduled to be transferred from MCC New York to GEO (Queens Detention Facility) on August 9, 2019. This attachment also includes the acronym "WAB" within the Destination/Description portion of the document, which MCC New York personnel told the OIG means "with all belongings." During their OIG interviews, MCC New York staff members further explained that the "WAB" notation meant that Inmate 3 was being permanently removed from MCC New York on August 9, 2019. Notwithstanding this email, as detailed below, several of the email recipients identified above, including the Captain, the Day Watch Operations Lieutenant, and the Day Watch Activities Lieutenant told the OIG that they believed Inmate 3 had gone to court on August 9, and they did not know he had been transferred to another facility.

B. MCC New York Staff Reject Epstein Attorney's Request that Epstein be Housed Without a Cellmate

Forensic Psychologist 1 told the OIG that on August 9, 2019, she was present during a meeting in which one of Epstein's attorneys opposed Epstein having a cellmate. Forensic Psychologist 1 explained to the attorney that because Epstein was housed in the SHU and he was a sex offender, he needed to have a cellmate.

Additionally, the OIG investigation revealed that on the day of Epstein's death, a Supervisory Staff Attorney with the BOP's Consolidated Legal Center for New York, sent an email to the Warden to inform him that on the previous day (August 9, 2019), two of Epstein's attorneys separately contacted him. One of the attorneys asked for Epstein to be moved to a different, specific housing unit within MCC New York; the other attorney asked for Epstein to be housed without a cellmate in the SHU. The Supervisory Staff Attorney said he informed the first attorney that the suggested housing unit was not available for pretrial detainees such as

³² GEO refers to the Queens Detention Facility, a contract detention facility located in Queens, New York, that is managed by The GEO Group, Inc.

Epstein, and he said he told the second attorney that Epstein could not be housed without a cellmate because of his prior suicide attempt.

C. Removal on August 9 of Epstein's Cellmate from MCC New York

According to MCC New York reports, including the Daily Log and the Lieutenant's Log, on August 9, 2019, at approximately 8:38 a.m., Epstein's cellmate, Inmate 3, was "pre-removed" and transferred out of MCC New York in a routine, pre-arranged transfer. The Daily Log tracks inmate movements throughout MCC New York each day, while MCC New York Lieutenants utilize the Lieutenant's Log to document the daily activities that took place within the institution during their respective shifts.

The Supervisory Correctional Systems Specialist was the supervisor of Receiving and Discharge on August 9, 2019, and was responsible for overseeing all inmate movements in and out of the institution that day. The Supervisory Correctional Systems Specialist verified that Receiving and Discharge would have used the USMS emails sent on August 8, 2019, to coordinate Inmate 3's transfer out MCC New York, and since Inmate 3 was listed as "WAB" on the USMS emails, that meant he was being transferred from the facility and not coming back. She explained to the OIG that if Inmate 3 had been going to court, as many pretrial inmates held at MCC New York often did, the Daily Log would have reflected "court," rather than "pre-remove." Since the Daily Log listed Inmate 3 as "pre-remove," the Receiving and Discharge personnel who entered the information into the report were made aware that Inmate 3 was being transferred from MCC New York on or before the morning of August 9, 2019. The Supervisory Correctional Systems Specialist told the OIG that the language in the USMS emails ("WAB," i.e., "with all belongings") and MCC New York reports ("pre-removed") made it clear that Inmate 3 would not be returning to the SHU or MCC New York.

The OIG also interviewed the Correctional Systems Officer, who was the Receiving and Discharge officer who handled inmate movement in and out of MCC New York on August 9, 2019. The Correctional Systems Officer confirmed that the Daily Log reflected that Inmate 3 was "pre-removed" on August 9, 2019, at 8:38 a.m., because he was being officially moved from the institution to another prison. She explained to the OIG that the ordinary process was that Receiving and Discharge personnel would enter the information regarding Inmate 3 into SENTRY, along with information pertaining to other inmates who would be leaving their MCC New York housing units. Receiving and Discharge used this information to create the daily call out list, which had all of the inmates' names and times that they were to be moved. The Correctional Systems Officer told the OIG that the call out list from August 9, 2019, was no longer available because the call out lists were printed and hand-delivered to the housing units each day, and then discarded by the units at the end of the day. She also said each day's call out list was only maintained electronically for a 24-hour period, and then it was updated (overwritten) with the next day's list. In her OIG interview, the Correctional Systems Officer explained what would have occurred on this date based on her experience. Receiving and Discharge personnel would have printed copies of the call out list for August 9, 2019, which the MCC New York internal officer would distribute to the various housing units within the facility. Based on the other records reflecting Inmate 3's transfer, the Correctional Systems Officer said the call out list created for August 9, 2019, would have listed "WAB" next to Inmate 3's name, which meant that he was departing from the institution and not returning.

Correctional Officer (CO) 1 told the OIG that on the morning of August 9, 2019, he and Day Watch SHU Officer in Charge escorted Inmate 3 to Receiving and Discharge and Epstein to his legal visit.

D. Failure to Assign Epstein a New Cellmate on August 9

1. Day Watch Staff Actions on August 9

The SHU Lieutenant told the OIG that he worked at MCC New York on August 8, 2019, from approximately 6 a.m. until approximately 2 p.m., and that he was off on August 9, 2019. The SHU Lieutenant, whose shift ended over an hour before the USMS sent the second email regarding Inmate 3's impending transfer, told the OIG he was not aware that Inmate 3 was scheduled to be transferred out of MCC New York, and therefore he did not notify the Captain that Epstein would require a new cellmate. According to the SHU Lieutenant, as soon as the SHU staff learned that Inmate 3 would be transferred, they should have notified a Lieutenant on duty. The Day Watch Operations Lieutenant and the Day Watch Activities Lieutenant told the OIG that on August 9, 2019, they had oversight of the SHU from approximately 6 a.m. until 2 p.m. due to their position descriptions and because of the SHU Lieutenant's absence.

According to the MCC New York Staff Roster, on August 9, 2019, SHU Officer #1 was listed as Senior Officer Specialist 5. Although SHU Officer #1 is typically the Officer in Charge, another Senior Officer Specialist told the OIG that, in actuality, he was the Day Watch SHU Officer in Charge on August 9 from approximately 6 a.m. until 2 p.m. The Day Watch SHU Officer in Charge said that since he had the most experience and seniority, he was considered by everyone to be the SHU Officer in Charge, which the SHU Lieutenant confirmed. The Day Watch SHU Officer in Charge told the OIG that he knew that Epstein had to have a cellmate. He said that, as a general practice, every inmate who is transferred from suicide watch and/or psychological observation to the SHU is placed with a cellmate. He also confirmed that the SHU Lieutenant had instructed him that Epstein was to be housed with a cellmate at all times. According to the Day Watch SHU Officer in Charge, between July 30 and August 9, 2019, he told all other MCC New York staff members who worked in the SHU of Epstein's cellmate requirement and further stated that everyone who worked in the SHU should have known that Epstein was required to have a cellmate due to their knowledge, training, and experience.

The Day Watch SHU Officer in Charge confirmed that on the morning of August 9, 2019, the SHU staff received an inmate call out list that listed Inmate 3 as "WAB," which he explained meant that Inmate 3 was being removed from MCC New York. He told the OIG that sometime between 8 a.m. and 9 a.m., he escorted Epstein from the SHU to the attorney conference room for Epstein's daily legal visit, during which time Epstein joked around with him. The Day Watch SHU Officer in Charge said that he and Epstein were accompanied by CO 1, who was escorting Inmate 3 to Receiving and Discharge. The Day Watch SHU Officer in Charge and CO 1 both told the OIG that Inmate 3 was escorted to Receiving and Discharge with all of his belongings, and both said that during the escort the Day Watch SHU Officer in Charge informed Epstein that he would be assigned a new cellmate due to Inmate 3's departure and the requirement that Epstein have a cellmate. In his interview with the OIG, CO 1 confirmed this conversation between the Day Watch SHU Officer in Charge and Epstein, but he did not provide any additional information regarding notifications made either by him or the Day Watch SHU Officer in Charge. The Day Watch SHU Officer in Charge told the OIG that when he and CO 1 left the SHU with Epstein and Inmate 3, both the Day Watch Operations Lieutenant and the Day Watch Activities Lieutenant should have been physically present in the Lieutenants' Office and should have seen that Inmate 3 was departing the institution when they passed the office.

The Day Watch SHU Officer in Charge said that while he did not expect Inmate 3 to return to MCC New York, there had been times when inmates had been escorted to Receiving and Discharge as an expected removal, only to be returned to the SHU later that same day due to unforeseen circumstances. According to the Day

Watch SHU Officer in Charge, he did not select a new cellmate for Epstein because he was not certain that Inmate 3 had been discharged from the institution, although he assumed that Inmate 3 would not return to the SHU. The Day Watch SHU Officer in Charge told the OIG that when his shift ended at approximately 2 p.m., he informed the Evening Watch SHU Officer in Charge and Senior Officer Specialist 5 that, if Inmate 3 did not return to the SHU, Epstein would need a new cellmate upon Epstein's return from his attorney visit. The Day Watch SHU Officer in Charge said he specifically recalled telling the Evening Watch SHU Officer in Charge, in the presence of Senior Officer Specialist 5, "Make sure this guy gets a bunkie," to which the Evening Watch SHU Officer in Charge replied, "All right." The Day Watch SHU Officer in Charge said that, at some point that day, it was likely that he also informed the Day Watch Operations Lieutenant, but he could not specifically recall if he had done so.

The Day Watch SHU Officer in Charge told the OIG that a replacement cellmate should have been identified as soon as it was confirmed that Inmate 3 had left the institution. He said a new cellmate could have been reassigned before the 4 p.m. SHU count if it was known that Inmate 3 was not coming back, but the SHU staff members had until Epstein returned from his attorney visit to assign Epstein a new cellmate. According to the Day Watch SHU Officer in Charge, SHU staff definitely should have realized that Inmate 3 was not returning both during the 4 p.m. count and when Epstein returned from his attorney visit later that evening. The Day Watch SHU Officer in Charge told the OIG that Epstein's daily routine was that he would be with his attorneys in the attorney conference room until approximately 8 p.m., so SHU personnel had time to make a new cellmate assignment. He said all SHU staff members shared the responsibility to find a replacement cellmate and that anyone assigned to the SHU could have found another inmate to replace Inmate 3. However, he also said that due to Epstein's high profile, the SHU personnel should have asked a Lieutenant to contact the Psychology Department to see which inmate should be placed with Epstein.

On August 12, 2019, following Epstein's death, the Day Watch SHU Officer in Charge wrote a memorandum to the Warden stating, "On Friday August 9, 2019 at approximately 1:50 p.m., I S/O/S [the Day Watch SHU Officer in Charge] passed on to oncoming staff member [the Evening Watch SHU Officer in Charge] and present shift staff [Senior Officer Specialist 5] and [CO 2] that Inmate [3] was going WAB [i.e., with all of his belongings] and possibly may not return. Also that Inmate Epstein #76318-054 will be needing a cell mate upon arrival from his attorney visit." The Day Watch SHU Officer in Charge departed the SHU at approximately 2 p.m. and worked an overtime shift as a driver for MCC New York. He stated that he did not follow up with the SHU staff to verify that Epstein had been assigned another cellmate.

MCC New York staff with responsibility for oversight and staffing of the SHU during the Day Watch, including the Warden, Associate Warden 1, the Captain, the SHU Lieutenant, the Day Watch Operations Lieutenant, the Day Watch Activities Lieutenant, and the Day Watch SHU Officer in Charge, told the OIG that they all knew Epstein was required to have a cellmate pursuant to the Psychology Department's determination. They also confirmed that everyone who regularly worked in the SHU knew of this requirement, and that it was the responsibility of all SHU staff to notify a supervisor upon learning that Epstein needed to be assigned a new cellmate due to Inmate 3's transfer to another prison. The Day Watch SHU Officer in Charge and CO 1, however, were the only two MCC New York staff members working the Day Watch on August 9, 2019, who told the OIG that they were aware of Inmate 3's transfer and the need to assign Epstein a new cellmate. CO 1's immediate superior (the Day Watch SHU Officer in Charge) was already aware of the need to assign Epstein a new cellmate. While the Day Watch SHU Officer in Charge told the OIG that he made a number of notifications, other witnesses could not confirm that he had passed on information regarding Epstein's need for a new cellmate.

The Day Watch Operations Lieutenant and the Day Watch Activities Lieutenant both told the OIG that they did not know Inmate 3 had been transferred out of the facility, despite the fact that both were recipients of the second email the USMS sent on August 8 that included the information about Inmate 3's impending transfer out of MCC New York on August 9. Rather, the Day Watch Operations Lieutenant and the Day Watch Activities Lieutenant told the OIG that they believed Inmate 3 had been removed from MCC New York for a court appearance.

The Day Watch Activities Lieutenant did not recall Inmate 3 departing the institution with all of his belongings or having any conversations with the Day Watch SHU Officer in Charge or anyone else regarding Inmate 3's departure from MCC New York. According to the Day Watch Activities Lieutenant, he did not know that Epstein was without a cellmate. Other senior officials, including the Warden, Associate Warden 1, and the Captain, were also unaware of Inmate 3's transfer and the need to assign Epstein a new cellmate. These officials concurred that while all SHU staff and supervisors were responsible for notifying a supervisor in the chain-of-command of the need to assign Epstein a new cellmate, the Day Watch SHU Officer in Charge bore primary responsibility for the notification because he was the SHU Officer in Charge and one of two people who saw Inmate 3 leave the facility with all of his belongings. The Captain told the OIG that since Epstein was in the attorney conference room all day, no one may have even thought about it, and may have only become aware when they put Epstein back in his cell after his attorney visit that evening. The Captain said as soon as the SHU staff became aware that Epstein was without a cellmate, they should have notified the Evening Watch Operations Lieutenant. The Captain said that if he had been informed, he would have taken immediate action to ensure that Epstein was either assigned a new cellmate or monitored until that assignment occurred. The Captain, however, was one of the recipients of the USMS August 8 email that notified members of MCC New York supervisory staff of Inmate 3's transfer to another facility. The Warden and Associate Warden 1 did not receive this email.

The Warden told the OIG that he was off duty on August 9, 2019. The Warden said that in the event Epstein was without a cellmate, the plan was to review the situation and decide who should replace Inmate 3, but that no inmate in the SHU was preselected to replace Inmate 3 if this event occurred.

2. Evening Watch Staff Actions on August 9

The Evening Watch SHU Officer in Charge told the OIG that he was the SHU Officer in Charge on August 9 from approximately 2 p.m. until 10 p.m. The Evening Watch SHU Officer in Charge said he relieved the Day Watch SHU Officer in Charge from his duties and worked in the SHU with Senior Officer Specialist 5, a Material Handler, CO 2, and CO Tova Noel. The Evening Watch SHU Officer in Charge stated that when he began his shift, Epstein was visiting with his attorneys in the attorney conference room. The Evening Watch SHU Officer in Charge told the OIG that he did not recall having a conversation with the Day Watch SHU Officer in Charge about Epstein needing a cellmate. When advised that the Day Watch SHU Officer in Charge was confident about their conversation, the Evening Watch SHU Officer in Charge stated, "I don't necessarily want to call anyone a liar[] per se, but I don't remember him speaking to me about this. So, maybe he spoke to [Senior Officer Specialist 5], and maybe I was standing there, and he thought I heard him." The Evening Watch SHU Officer in Charge said if Inmate 3 had left MCC New York with all of his belongings, then someone should have found another inmate to replace him because Epstein was required to have a cellmate.

The Evening Watch SHU Officer in Charge told the OIG that he eventually learned later that evening that Epstein did not have a cellmate. According to the Evening Watch SHU Officer in Charge, after Epstein returned from his attorney visit and placed a telephone call, he escorted Epstein to his cell and saw that Inmate 3 was not there. According to the Evening Watch SHU Officer in Charge, after he realized that Epstein did not have a cellmate, he, Noel, and the Material Handler, all of whom were working in the SHU that evening, talked about Epstein needing a new cellmate. The Evening Watch SHU Officer in Charge said SHU staff could not just put anyone in the cell with Epstein. In his interview with the OIG, the Evening Watch SHU Officer in Charge stated that he called someone (he could not recall who) and notified that person that Epstein did not have a cellmate. OIG interviews did not identify an individual who received such a call or who witnessed the Evening Watch SHU Officer in Charge making it.

Senior Officer Specialist 5 told the OIG that on August 9, he worked in the SHU from approximately 8:45 a.m. until 4 p.m. Senior Officer Specialist 5 said when he reported for duty, Epstein was already with his attorneys, Inmate 3 had already left the SHU, and neither inmate returned to the SHU prior to his departure. Senior Officer Specialist 5 told the OIG that he did not know Inmate 3 had been released from MCC New York and that no one told him Epstein would need a new cellmate, including the Day Watch SHU Officer in Charge, the Captain, the SHU Lieutenant, or anyone from the Psychology Department.

CO 2 told the OIG that on August 9, he worked in the SHU from 8 a.m. until 4 p.m. CO 2 said he did not recall Inmate 3 departing the SHU that day, and that he was unaware that Epstein needed a new cellmate.

The Evening Watch Operations Lieutenant told the OIG that he was the Operations Lieutenant at the MCC on August 9 from approximately 2 p.m. until 10 p.m. The Evening Watch Operations Lieutenant said he was aware that Epstein was required to have a cellmate due to a mass email that was sent to all of the MCC New York Lieutenants. According to the Evening Watch Operations Lieutenant, everyone who regularly worked in the SHU should have known that Epstein was required to have a cellmate. The Evening Watch Operations Lieutenant told the OIG that he did not know Inmate 3 had left MCC New York earlier that day and was unaware that Epstein did not have a cellmate. He said that if Inmate 3 had been transported to Receiving and Discharge as "WAB" and the SHU Lieutenant was off, then another supervisor should have been notified. The Evening Watch Operations Lieutenant told the OIG that SHU personnel assigned to his shift should have notified him that Epstein was without a cellmate, but he had not been informed. The OIG's investigation revealed, however, that the Evening Watch Operations Lieutenant was one of the recipients of the USMS email notifying MCC New York supervisory staff of Inmate 3's scheduled transfer out of MCC New York on August 9. According to the Evening Watch Operations Lieutenant, the Acting Evening Watch Activities Lieutenant conducted the Lieutenant round in the SHU on August 9, and she only would have known that Epstein was without a cellmate if someone from the SHU told her or if she walked through the SHU tiers during the round. The Evening Watch Operations Lieutenant said he believed that if the Evening Watch Acting Activities Lieutenant knew that Epstein did not have a cellmate, she would have notified him.

Both the Acting Evening Watch Activities Lieutenant and the Morning Watch Operations Lieutenant told the OIG that they were unaware that Epstein needed to have a cellmate. The Acting Evening Watch Activities Lieutenant, who was serving in this position on August 9 from approximately 4 p.m. until 10 p.m., told the OIG that because her ordinary position was a Senior Officer Specialist, she was not aware that Epstein was required to have a cellmate. The Acting Evening Watch Activities Lieutenant recalled hearing that Epstein had been placed on suicide watch, but said she never received specific instructions regarding Epstein. She said the SHU staff did not tell her about the requirement that Epstein have a cellmate or that his cellmate

had left MCC New York. The Acting Evening Watch Activities Lieutenant did not receive the August 8 USMS email regarding Inmate 3's transfer. The Morning Watch Operations Lieutenant, who was the Operations Lieutenant from approximately 10 p.m. on August 9 until 6 a.m. on August 10, told the OIG that she did not know that Epstein was required to have a cellmate, and that the Captain never spoke with her about this issue. The Captain confirmed that he did not specifically tell the Morning Watch Operations Lieutenant that Epstein needed a cellmate; however, the Captain said he believed that the Morning Watch Operations Lieutenant should have known of the requirement, and she was one of the recipients of the email from the Psychology Department on July 30, 2019, that informed MCC New York staff that Epstein needed to have an appropriate cellmate. The Morning Watch Operations Lieutenant also received the August 8 USMS email notifying MCC New York supervisory staff of Inmate 3's scheduled transfer out of MCC New York. The Morning Watch Operations Lieutenant told the OIG that if SHU staff knew that Epstein required a cellmate and did not have one, they should have informed her when she visited the SHU at approximately 4 a.m. on August 10, as part of her Lieutenant rounds.

The Material Handler said the SHU was not his regular post and he had not attended SHU training, but he had worked in the SHU approximately 10 to 20 times. According to the Material Handler, on August 9 he reported for a voluntary overtime shift from 12 a.m. to 8 a.m. and then worked his regular 8 a.m. to 4 p.m. shift in the warehouse. At some point during the day shift, the Day Watch Operations Lieutenant called and asked the Material Handler if he could work overtime in the SHU, and he agreed. The Material Handler said he worked the 4 p.m. to 12 a.m. shift in the SHU with the Evening Watch SHU Officer in Charge and Noel. The Material Handler told the OIG that he felt pressured to work the third shift, which resulted in him working 24 hours straight, from 12 a.m. on August 9 through 12 a.m. on August 10. After the Evening Watch SHU Officer in Charge left at 10 p.m., the Material Handler and Noel were the only employees working in the SHU from 10 p.m. to 12 a.m. The Material Handler recalled that Epstein came back to the SHU from meeting with his attorneys at approximately 8 p.m., which was later than the rest of the inmates, and was returned to his cell on L Tier. After the Material Handler and Noel gave Epstein his food, the Material Handler said they left the L Tier area. The Material Handler said Epstein was alone in his cell, but he was unaware that Epstein needed a cellmate.

Noel told the OIG that she worked in the SHU from approximately 4 p.m. on August 9 until 8 a.m. on August 10, which was a double shift of 16 hours. Noel said the SHU was her regular post during the time that Epstein was housed within the SHU. According to Noel, inmates housed within the MCC New York SHU were typically assigned cellmates, but she did not know if they were required to have cellmates. Noel said Epstein was assigned a cellmate while he was housed within the SHU but said that no one spoke with her about a requirement that Epstein have a cellmate. Noel said she did not know that Inmate 3 had been removed from MCC New York on August 9, and stated she was not aware that Epstein should have been assigned a new cellmate if Inmate 3 had been removed from MCC New York.

Material Handler Michael Thomas told the OIG that he worked a shift in the SHU on August 10 from 12 a.m. until 8 a.m. Thomas said the SHU was not his normal post, but he had worked in the SHU on numerous previous occasions and was familiar with the SHU protocols and procedures. Thomas said he knew that if an inmate came off suicide watch or psychological observation, they should be assigned a cellmate, and he said he was aware that Epstein had previously been on suicide watch and psychological observation. Therefore, Thomas assumed that Epstein was required to have a cellmate but said no one had spoken with him about that requirement. Thomas said the SHU staff should have notified the Operations Lieutenant as soon as they knew that Epstein's cellmate had departed MCC New York on August 9. However, Thomas said

he did not know that Inmate 3 was removed from MCC New York on August 9, and that Epstein was without a cellmate during his shift on August 10.

IV. Epstein is Allowed to Make an Unmonitored Telephone Call on August 9

For safety and security reasons, BOP policy requires that all inmate telephone calls be made through the Inmate Telephone System. BOP records reflect that Epstein placed an unrecorded, unmonitored telephone call to a telephone number in the local 646 area code using a non-Inmate Telephone System line on August 9, 2019, from 6:58 p.m. to 7:19 p.m. No other BOP records exist regarding the unmonitored call, including identity of the person called or a summary of the conversation. The OIG found no evidence that Epstein signed an Acknowledgement of Inmate form, as required by BOP policy and necessary for him to use a non-Inmate Telephone System line. The Acknowledgement of Inmate form provides, among other things, that the BOP reserves the authority to monitor and record non-attorney conversations on any telephone located within the institution to preserve the security and orderly management of the institution and to protect the public. The OIG did not find that any notification was made to the MCC New York's Special Investigative Services staff advising the telephone call had been made, the date and time of the telephone call, the name of the person being called, Epstein's name and register number, or a brief statement explaining the purpose of Epstein's telephone call, as BOP policy requires.

The Evening Watch Operations Lieutenant told the OIG that when he was preparing to escort Epstein back to the SHU from the attorney conference room on August 9, 2019, a Unit Manager said to the Evening Watch Operations Lieutenant that he was going to escort Epstein, so he could provide Epstein with the opportunity to place a telephone call using an unrecorded legal telephone line that is utilized by inmates to call their attorneys. The Unit Manager was the Institutional Duty Officer the week of Epstein's death. The Northeast Regional Director told the OIG that an Institutional Duty Officer is a supervisor who monitors the facility on non-duty hours on behalf of the Warden when the Warden is not present.

The Captain told the OIG that he had authorized the Unit Manager to provide Epstein with a telephone call from the SHU on August 9, 2019, because he wanted to accommodate Epstein's request for a telephone call since Epstein was assigned to the SHU and had limited ability to place telephone calls. The Captain explained that when the Unit Manager was escorting Epstein from his attorney visit back to the SHU, he told the Unit Manager in the elevator that Epstein could place a telephone call from the SHU, but it had to be monitored and logged.

The Unit Manager told the OIG that he worked on August 9 from approximately 11 a.m. to 7 p.m. The Unit Manager explained that on August 9, Epstein asked to call his mother and that it was his understanding that Epstein had not been able to obtain the necessary documentation to use the Inmate Telephone System for various reasons, including the fact that Epstein was with his attorneys during normal working hours. As described below, Epstein had, in fact, completed the requisite BOP paperwork that allowed him to place calls through the Inmate Telephone System. The Unit Manager said the decision to allow Epstein to place the call was his alone as the Unit Manager and because, as the Institutional Duty Officer, he was representing the Warden, who was not physically within MCC New York at that time. The Unit Manager said he did not recall having a conversation with the Captain about permitting Epstein to make the call, and he would have allowed the call even if the Captain did not want him to, given it was his decision to make as the Unit Manager. The Unit Manager explained that he viewed ensuring that inmates had family socialization as

a part of his job, and he would allow inmates to place telephone calls if they were unable to make calls under ordinary circumstances.

The Unit Manager told the OIG that at approximately 6:45 p.m., he and Senior Officer Specialist 1 escorted Epstein from the attorney conference room to the SHU so that Epstein could place a telephone call. The Unit Manager said he put Epstein in the shower area to make the telephone call because COs were present in that area. The Unit Manager explained that he also chose the shower area because that location ensured Epstein would not be able to pull the phone cord into his cell and use it to harm himself. The Unit Manager said he plugged the telephone line into the legal line, which was not recorded, and dialed the telephone number that Epstein provided. As noted above, the number that was dialed was in the local 646 area code. The Unit Manager said he allowed Epstein to place the telephone call on the unrecorded legal line because he believed that Epstein had not set up his Inmate Telephone System account that would have allowed him to call on the institutions recorded lines. According to the Unit Manager, a male answered, and the Unit Manager handed the receiver to Epstein. The Unit Manager heard Epstein say, "Hey, how are you doing? How's everything?" The Unit Manager admitted that he should have verified who was on the line, as Epstein had requested to make a telephone call to speak with his mother, and it was a male who answered the phone. The Unit Manager said he could not verify the phone number because he believed that Epstein did not have his Inmate Telephone System account set up, and he did not have any phone numbers associated with his account. The Unit Manager told the OIG that after he handed the telephone to Epstein, his shift ended so he left the SHU and left MCC New York for the day.

The Unit Manager said that when he left the SHU, Epstein was still on the call and the Evening Watch SHU Officer in Charge and Noel were at the officers' desk, and that Senior Officer Specialist 1 was also present. According to the Unit Manager, when he was leaving, he told the officers, "Hey, make sure he gets his 15-minutes, and after that, he's done." The Unit Manager said he did not provide the SHU staff with instructions to monitor the call. He said that after he left, he contacted Noel on the SHU telephone and asked her to make sure that Epstein's call had ended because his time was up.

The Unit Manager acknowledged that he did not stay and monitor the call as he should have done. The Unit Manager said the proper way to have an inmate place a telephone call on an unmonitored line would be to bring the inmate out and place him in a belly chain because then he would be handcuffed in the front. The Unit Manager said he should have provided Epstein with the phone, with a counselor or unit team member present, and placed the call on speaker so the call was monitored.

The OIG investigation determined that Epstein did not, in fact, speak with his mother, who, according to public records, died in 2004. The OIG found that Epstein actually spoke with Individual 1, who declined to be interviewed by the OIG.³³ Individual 1's lawyer told the U.S. Attorney's Office for the Southern District of New York during an attorney proffer that Individual 1 spoke with Epstein on August 9, 2019, at about 7 p.m., for approximately 20 minutes. Individual 1's attorney proffer was that Individual 1 was in the country of Belarus at the time of the call.³⁴ Individual 1's attorney told the U.S. Attorney's Office that during the

³³ The OIG does not have the authority to compel or subpoena testimony from individuals who are not Department of Justice employees.

³⁴ The OIG did not investigate the factual accuracy of this proffer. We note that there are methods by which a call to the 646 area code could connect to a telephone in Belarus.

telephone call, Epstein told Individual 1 that the press had gotten crazy, and they discussed personal things such as books, music, and hygiene while incarcerated. According to the representations by Individual 1's counsel, Epstein told Individual 1, "They are trying to keep me safe," and that his case would take a little longer than he originally thought. He told Individual 1 he loved her, to be strong, and that he would not be able to call her again for another month.

Senior Officer Specialist 1 told the OIG that he was not a witness to Epstein's August 9 call, but he had previously discussed telephone calls with Epstein and knew that Epstein had the requisite paperwork that allowed him to place calls through the Inmate Telephone System. Senior Officer Specialist 1 told the OIG that Epstein was issued the necessary documentation to make telephone calls when Inmate 1 was his cellmate. Senior Officer Specialist 1 also advised the OIG about an interaction that he had with one of Epstein's attorneys prior to August 9 when he was on an elevator with Epstein and the attorney. According to Senior Officer Specialist 1, Epstein's attorney asked him about getting Epstein the necessary documentation to make calls. Senior Officer Specialist 1 said he then verified that Epstein was able to make calls through the Inmate Telephone System. When Senior Officer Specialist 1 asked Epstein why he had said he was unable to make calls, Epstein responded, "[T]hey said they monitor those phone calls." Senior Officer Specialist 1 said that in a subsequent conversation with Epstein's attorney, the attorney asked how Epstein could get an unmonitored call. Senior Officer Specialist 1 told Epstein's attorney that decision had to be made by a Lieutenant or Unit Manager.

Noel told the OIG that after Epstein's attorney conference on August 9, the Unit Manager plugged a telephone line in the legal line, and placed Epstein in a shower area within the SHU where he was afforded a telephone call. The OIG investigation determined that the legal line is an unrecorded telephone line outside of the Inmate Telephone System, which is designed for inmates to use when speaking with their counsel and therefore is not recorded. Noel said that after the Unit Manager set Epstein up with the call, he left the SHU and did not instruct Noel, or anyone else to Noel's knowledge, to monitor Epstein's call. According to Noel, the call was not monitored or logged. Noel said that approximately 15 to 20 minutes later, while Epstein was still using the telephone, the Unit Manager called the SHU staff via telephone, told Noel that Epstein's time was up, and asked that Noel retrieve the telephone from Epstein. Noel estimated that Epstein's call lasted for 20 minutes and said the Evening Watch SHU Officer in Charge and the Material Handler were also present in the SHU during Epstein's phone call. Noel reported that she took the phone back from Epstein, left Epstein alone in the shower, and went to use the bathroom on 10 South. Noel said that upon her return, Epstein was already placed back in his cell.

The Evening Watch SHU Officer in Charge told the OIG that he was present in the SHU on August 9 during the time of Epstein's telephone call but did not overhear Epstein's conversation. The Evening Watch SHU Officer in Charge also said that while Epstein was having his telephone call, the officers were distracted by the actions of another inmate. The Material Handler said he did not recall seeing the Unit Manager or Epstein in the shower area on the night of August 9, and did not have any knowledge or information regarding a phone call made by Epstein that night.

The Northeast Regional Director told the OIG that if Epstein's call was authorized by an MCC New York official, then it should have been done on a speaker phone while being monitored by a staff member, and the call should have been logged and a record of the call should have been created. The Northeast Regional Director said Epstein's unmonitored telephone call was extremely concerning because "[w]e don't know

what happened on that phone call. It could have potentially led to the incident [Epstein's death], but we don't, we will never know."

V. Failure to Conduct SHU Inmate Counts and Staff Rounds on August 9--10

A. SHU Inmate Counts

As detailed in the BOP policies section of Chapter 2, the BOP requires COs assigned to guard inmates to conduct institution-wide counts of inmates at regularly scheduled intervals each day to ensure that all inmates are present and accounted for at the appropriate location within the facility. Performing an institutional count is one of the basic and essential aspects of a CO's job, and the count was one of the basic and essential components of the daily operation of MCC New York. The Captain told the OIG that counts are a core responsibility of COs and ensure accountability of the inmates. The Evening Watch Operations Lieutenant said that it is very important that the institutional count is accurate because that is how staff members know if all inmates are present and if anyone has escaped.

On weekdays, MCC New York conducted institutional counts at 12 a.m., 3 a.m., 5 a.m., 4 p.m., and 10 p.m. The 10 p.m. count was a stand-up count, which meant that inmates were required to stand when they were counted. Pursuant to BOP policy and MCC New York SHU Post Orders, two COs were required to perform the institutional count for each housing unit, including the SHU. To perform the institutional count in the SHU, BOP policy and MCC New York SHU Post Orders required two officers to walk from tier to tier to observe and count each individual inmate. During each count, one CO would count the inmates while the other officer observed the inmates. The two officers would then switch roles and compare the count numbers. If the totals did not match, then the officers had to conduct another count in the same manner. COs had to document their performance of inmate counts on an official MCC New York form often referred to as a count slip.³⁵

On the count slip, COs were required to fill in the date and time the count had been performed, write the total number of inmates physically present in the unit counted, and then both COs printed their name and signed the count slip. Once the COs had completed and signed the count slip, the count slips were then collected and delivered to the Control Center. Officers assigned to the Control Center were responsible for comparing the count slips from each housing unit to the institution's inmate roster to ensure that each inmate was accounted for. Only after all the count slips had been collected from each housing unit, and the numbers on the slips had been matched to the institution's inmate roster, could the institutional count be deemed "cleared" or completed. If a housing unit's count slip was incomplete or did not match the number of inmates that were supposed to be in the unit, then the count had to be redone in that housing unit via a more intensive version of the institutional count, called a bed-book count, which is when inmates are counted using their picture cards. Records of each institutional count, including the count slips, were provided to a supervising official and retained by MCC New York.

The OIG's investigation found that none of the required SHU inmate counts were conducted from 4 p.m. on August 9, 2019, until Epstein was discovered hanged in his cell at approximately 6:30 a.m. on August 10, 2019. Further, the OIG determined that SHU staff did not conduct any 30-minute rounds after approximately 10:40 p.m. on August 9, and that the count slips and round sheets had been falsified. As a

³⁵ This BOP form is officially entitled "Metropolitan Correctional Center; New York, New York; Official Count Slip."

result, many SHU staff and supervisors were unaware that Epstein did not have a cellmate as the Psychology Department had determined was necessary, and Epstein was alone and unobserved in his cell for an extended period of time.

1. *The 4 p.m. SHU Count on August 9*

The OIG's investigation determined that the 4 p.m. SHU inmate count on August 9, 2019, was inaccurate because SHU staff did not physically count the inmates as required by BOP policy and instead relied upon a predetermined number of inmates believed to be in the SHU at that time. However, Epstein, who was in the SHU attorney visitation room, was correctly accounted for during the 4 p.m. and subsequent SHU counts. The OIG determined that the error in the 4 p.m. SHU count was carried over into the next inmate count at 10 p.m. that counted an inmate who had been transferred out of the SHU. The SHU inmate count was not corrected until 12 a.m. when the Morning Watch Operations Lieutenant reviewed the master institutional count and housing unit count slips and informed SHU staff of the correct number of inmates in the SHU at that time.

Senior Officer Specialist 5 told the OIG that prior to his departure from the SHU at approximately 4 p.m., he told the Evening Watch SHU Officer in Charge what the SHU count should be. In addition, the Day Watch SHU Officer in Charge told the OIG that SHU staff maintain a "cheat sheet," which lists the number of inmates believed to be in the SHU at any given time.

When interviewed by the OIG, the Day Watch SHU Officer in Charge reviewed the 4 p.m. SHU count slip from August 9, 2019, which was signed by the Evening Watch SHU Officer in Charge and CO Noel. Based on his review, the Day Watch SHU Officer in Charge told the OIG that the Evening Watch SHU Officer in Charge and Noel probably did not count the inmates in the SHU. He said they likely wrote down the numbers they thought should have been entered for the count because the count slip inaccurately included an inmate (Inmate 4) among the number of inmates in the SHU after that inmate had been transferred to another housing unit. According to what he told the OIG and wrote in an email on August 9, earlier that afternoon the Day Watch SHU Officer in Charge observed Inmate 4 attempt to retrieve an unknown item from his visitor in the MCC New York SHU visiting room. The Lieutenant's Log from August 9, 2019, reflected that following this incident, Inmate 4 was removed from the SHU at 3:15 p.m. and transferred to the Receiving and Discharge dry cell, which is a secure location where inmates are taken for observation when they are believed to have ingested or secreted contraband on their person. According to the Day Watch SHU Officer in Charge, the inaccurate 4 p.m. count slip told him "that the count was not done and they just assumed and went by the cheat sheet because the body wasn't even there," referring to Inmate 4, who was transferred from the SHU to Receiving and Discharge. The Day Watch SHU Officer in Charge told the OIG that if the 4 p.m. SHU count had been accurately conducted, then the Evening Watch SHU Officer in Charge and the SHU staff should have realized that Inmate 4 was no longer in the SHU.

In his interview with the OIG, the Evening Watch SHU Officer in Charge acknowledged that neither he nor any other SHU staff member conducted the 4 p.m. SHU count on August 9. The Evening Watch SHU Officer in Charge verified that it was his handwriting and signature on the 4 p.m. SHU count slip and said he had prepared the count slip ahead of time because "[t]here was so much going on" in the SHU that day. The Evening Watch SHU Officer in Charge confirmed that Noel's name and signature also appeared on the 4 p.m.

count slip.³⁶ During his OIG interview, the Evening Watch SHU Officer in Charge reviewed BOP documents regarding the inmate's transfer from the SHU and acknowledged further that based on that transfer, the number of inmates listed on the SHU count slip he and Noel submitted for the 4 p.m. count, the count slip was incorrect.

Noel admitted in the deferred prosecution agreement she entered into with the U.S. Attorney's Office for the Southern District of New York that she completed false count slips on August 9 and 10. Noel initially told the OIG that she did not conduct the 4 p.m. count on August 9, but after acknowledging that she signed the 4 p.m. SHU count slip, Noel said she did not recall if she conducted the count. According to Noel, she and other SHU staff filled out the count slip before conducting the counts because they knew the number of inmates they were supposed to report.

2. The 10 p.m. SHU Count on August 9

At the time of the 10 p.m. count, all inmates in the MCC New York SHU, including Epstein, were locked in their cells for the night. At or around that time, the two officers assigned to the SHU were responsible for conducting the 10 p.m. stand up count. At 10 p.m. on August 9, the two assigned SHU officers were Noel and the Material Handler. Through review and analysis of the SHU security camera video, witness statements, and BOP records, the OIG determined that MCC New York staff did not perform the 10 p.m. count in the SHU.³⁷ Nonetheless, Noel and the Material Handler completed and signed the 10 p.m. SHU count slip. The 10 p.m. SHU count slip listed the total number of inmates as "73 + 1." According to the MCC New York master count sheet for the 10 p.m. count on August 9, 2019, all units had verbally reported their inmate counts to the Control Center by 10:30 p.m.³⁸ At approximately 10:36 p.m., the Control Center completed all paperwork and officially cleared the 10 p.m. institutional count.

The Material Handler said he was present at the time of the 10 p.m. count, but that the count was not conducted because everyone was tired. The Material Handler noted that on August 9, he had worked an overtime shift from 12 a.m. until 8 a.m., his regular shift from 8 a.m. to 4 p.m., followed by his SHU overtime shift from 4 p.m. to midnight. Thus, at the time of the 10 p.m. count, he had worked 22 consecutive hours at MCC New York. The Material Handler verified that he and Noel signed the 10 p.m. count slip and believed that Noel called the Control Center with their count numbers. He did not know why the count slip listed "73 + 1".

Noel told the OIG that she had conducted the SHU count alone at 10 p.m. and that the Material Handler signed the count slip even though he did not conduct the count with her. However, the OIG's review and analysis of the SHU security camera video conflicts with Noel's statement that she conducted the 10 p.m. count. Specifically, the video reflects that it was not until between 10:29 p.m. and 10:36 p.m. when Noel walked to different tiers inside the SHU. Yet, as described above, MCC New York records reflect that counts from all MCC New York housing units were reported to the Control Center by 10:30 p.m., as the count

³⁶ Prosecution was declined for BOP employees (other than Noel and Thomas) who falsely certified inmate counts and rounds on the day before and the day of Epstein's death.

³⁷ The quality of the SHU video footage was poor. Therefore, in conjunction with reviewing the video, the OIG analyzed witness statements and BOP records to better determine what the video depicted.

³⁸ The official name for the document used to record an institutional count is "Bureau of Prisons Count Sheet."

documentation shows the count was verbally cleared by the Control Center at 10:30 p.m. It therefore appears that the video depicts Noel conducting a later round in the SHU, as she was required to do every 30 minutes during her shift, and not the 10 p.m. SHU count.

Noel said she wrote the 73 on the count slip but she did not remember if she or someone else had written "+ 1" on the count slip and she did not know why "+1" was on the count slip. Noel claimed that, unlike the 4 p.m. count slip, which the Evening Watch Officer in Charge pre-filled, she did not prepare the 10 p.m. count slip in advance of the count. Noel said she did not know that the 10 p.m. SHU count slip, which listed 73 inmates, was inaccurate, and she could not explain why the 12 a.m. count also inaccurately listed that 73 inmates were physically present in the SHU, whereas the 3 a.m. and 5 a.m. count slips accurately listed 72 inmates in the SHU.

Senior Officer Specialist 6 told the OIG that on August 9, 2019, he worked in the Control Center from approximately 4 p.m. until 12 a.m., and then he worked as an Internal Officer from 12 a.m. until 8 a.m. on August 10. According to Senior Officer Specialist 6, he took the August 9 10 p.m. institutional count by himself in the Control Center, and assisted with the 12 a.m., 3 a.m., and 5 a.m. counts on August 10 as an Internal Officer. Senior Officer Specialist 6 confirmed to the OIG, as MCC New York records reflect, that he had received verbal counts from all units by 10:30 p.m., and further stated that he had cleared the institutional count at 10:36 p.m., which was when paperwork was complete and the count was officially complete.

Senior Officer Specialist 6 reviewed the MCC New York 10 p.m. institutional count, which showed that the SHU had 73 inmates assigned, whereas the Receiving and Discharge Department had zero inmates assigned to the unit. When questioned by the OIG about the 10 p.m. SHU count slip that listed "73 + 1" inmates and was signed by the Material Handler and Noel, Senior Officer Specialist 6 told the OIG that he believed that the "+ 1" on the count slip was in his handwriting. Senior Officer Specialist 6 also reviewed the 10 p.m. Receiving and Discharge count slip, which listed "9S + 1" on the count slip and told the OIG that it was his handwriting.³⁹ Senior Officer Specialist 6 explained that the "9S + 1" on the SHU count slip meant that he was "ghost counting" the inmate (Inmate 4) who had been moved from the SHU, located in the 9 South area, to the Receiving and Discharge area earlier that day. Senior Officer Specialist 6 said that because there were, in actuality, only 72 inmates in the SHU during the 10 p.m. count, he should have written "73 - 1" on the SHU count slip rather than "73 + 1".

³⁹ According to BOP records and witness interviews, "9S" refers to the SHU, which was located in 9th Floor South section of MCC New York.

Figure 5.1

10 p.m. Count Slips from the SHU and Receiving and Delivery on August 9

Metropolitan Correctional Center New York, New York Official Count Slip	
Unit: <u>HED</u>	Date: <u>8/9/2019</u>
Count: <u>1</u>	Time: <u>10:00pm</u>
1. Print Name: _____	
1. Signature: _____	
2. Print Name: _____	
2. Signature: _____	

Metropolitan Correctional Center Official Count Slip	
Unit: <u>ZA</u>	Date: <u>8.9.19</u>
Count: <u>43 + 1</u>	Time: <u>10:00pm</u>
Print Name: _____	
Signature: _____	
Print Name: _____	
Signature: _____	

Note: The images have been modified for privacy reasons.

Source: BOP

Senior Officer Specialist 6 did not recall if he wrote on the count slips at the time of the 10 p.m. count or during the 12 a.m. count when Inmate 4 was transferred in SENTRY from the SHU to Receiving and Discharge. Senior Officer Specialist 6 told the OIG that if he had made the notations at the time of the 10 p.m. count, he should not have cleared the count. Instead, he should have created a new master count sheet and requested that the SHU staff conduct a new count, provide a new count slip, and discard the inaccurate SHU count slip. Senior Officer Specialist 6 told the OIG that an Operations Lieutenant would have needed to authorize him to do the “ghost count” and write on the count slips, although he could not recall precisely who gave him the authorization or when he had done so. The OIG investigation and review determined that the only Operations Lieutenant on duty at the time was the Morning Watch Operations Lieutenant, who started her shift at 10 p.m. on August 9. When questioned by the OIG, the Morning Watch Operations Lieutenant adamantly denied having authorized a “ghost count” and the OIG identified no record or witness (other than Senior Officer Specialist 6) to indicate that she had done so. The OIG interviewed other MCC New York personnel, who said “ghost counting” was not permitted, and stressed the importance of an accurate physical count of inmates.

3. The 12 a.m., 3 a.m., and 5 a.m. SHU Counts on August 10

The Morning Watch Operations Lieutenant told the OIG that she supervised the August 10 12 a.m. institutional count from the Control Center. During the count, the Morning Watch Operations Lieutenant said she identified the issue with the inaccuracy of the SHU count slip because it counted Inmate 4 as present in the SHU, when in actuality he had been removed from the SHU and placed in the Receiving and Discharge dry cell the previous day (August 9, 2019). The Morning Watch Operations Lieutenant said that after learning of the discrepancy, she made the appropriate update reflecting the inmate transfer in SENTRY. This update is reflected in Inmate 4’s Inmate History Quarters, which states that Inmate 4 was transferred out of the SHU into a different housing unit on August 10, 2019, at 12:35 a.m. The Morning

Watch Operations Lieutenant told the OIG that she believed she told the SHU staff to conduct a new count and create a new count slip, but she did not know if they had actually done so.

During his interview with the OIG, Senior Officer Specialist 6 reviewed BOP records relating to the inmate transfer, the 12 a.m. institutional count, and the housing unit count slips. Based on his review of this material, Senior Officer Specialist 6 said the 12 a.m. SHU count slip was inaccurate because it continued to list 73 inmates instead of the 72 inmates who were physically present in the SHU at that time. Senior Officer Specialist 6 reviewed the institutional counts and SHU count slips for the 3 a.m. and 5 a.m. counts and told the OIG that they were accurate because they listed the SHU as having 72 inmates.

At approximately 12 a.m. on August 10, 2019, Material Handler Thomas replaced the other Material Handler, and he and Noel were the only two staff members on duty in the SHU. Noel and Thomas were responsible for conducting the 12 a.m., 3 a.m., and 5 a.m. counts in the SHU. Through review and analysis of the SHU security camera video, witness statements, and BOP records, the OIG determined that Noel and Thomas did not perform any of these counts. Nonetheless, Noel and Thomas completed and signed SHU count slips for each of the three counts, and in reliance on the count slips, the Control Center cleared the 12 a.m., 3 a.m., and 5 a.m. institutional counts at approximately 12:49 a.m., 3:24 a.m., and 5:30 a.m., respectively. Noel and Thomas both admitted to the OIG that they did not conduct the 12 a.m., 3 a.m., and 5 a.m. counts on August 10, and that they had falsified the respective count slips.

Noel told the OIG that she signed the August 10 12 a.m., 3 a.m., and 5 a.m. count slips that Thomas had prefilled. Noel said she did not know why the 12 a.m. count slip documented that there were 73 inmates in the SHU, whereas the 3 a.m. and 5 a.m. slips documented there were only 72 inmates. Noel recalled that Thomas had spoken with someone and then they changed the count slips.

Noel told the OIG that she and CO 3 conducted the 3 a.m. and 5 a.m. counts in MCC New York's 10 South Unit, which is the single-celled secure unit adjacent to the SHU. Noel said that when she left the SHU to assist CO 3, she took the SHU keys with her and that no one could have accessed the SHU while she was gone because she had to physically open the door for anyone who came into the SHU. Noel also told the OIG that when the Morning Watch Operations Lieutenant arrived to conduct a round at approximately 4 a.m., Noel let her into the SHU. The OIG's review and analysis of the SHU video shows that the Morning Watch Operations Lieutenant arrived in the SHU at approximately 4 a.m., visited the 10 South Unit at 4:04 a.m., returned to SHU at 4:11 a.m., and left the SHU at 4:14 a.m. According to Noel, no one other than the Morning Watch Operations Lieutenant and CO 3, as detailed later below, entered the SHU during her shift.

Thomas told the OIG that since he had begun working with the BOP in 2007, he had worked in the SHU fairly regularly and he was familiar with how to work in the SHU and how the SHU operated. Thomas described his responsibilities while working in the SHU as to maintain the count of inmates, make sure the inmates are fed, and, depending on the shift, make sure they get their showers. Thomas's Overtime Schedule showed that he worked 21 shifts in the SHU during morning watch from May through August 2019. The overtime schedule also showed that Thomas worked 12 overtime shifts in the SHU when Epstein was assigned to the SHU in July and August 2019.

Thomas acknowledged that neither he nor Noel conducted any rounds or counts in the SHU during their shift between approximately 12 a.m. and approximately 6:30 a.m. Thomas said the August 10, 2019 round sheets were signed, but the rounds were not conducted because he was tired that day. Thomas recalled “dozing off from here and there” during his shift, but he did not know if Noel slept.

Thomas did not recall having a conversation with anyone concerning the discrepancy between the 12 a.m. SHU count slip, which listed 73 inmates, and the institutional count, which listed 72 inmates in the SHU. Thomas said he had filled out and signed the 3 a.m. SHU count slip, which listed 72 inmates in the SHU. Thomas did not know why the number of inmates was different on the 12 a.m. and 3 a.m. count slips and did not recall speaking with the Morning Watch Operations Lieutenant about the 12 a.m. count. Thomas told the OIG that he knew he was falsely certifying the count slips when he signed them on August 10, 2019.

B. Staff Rounds in the SHU

1. CO Rounds

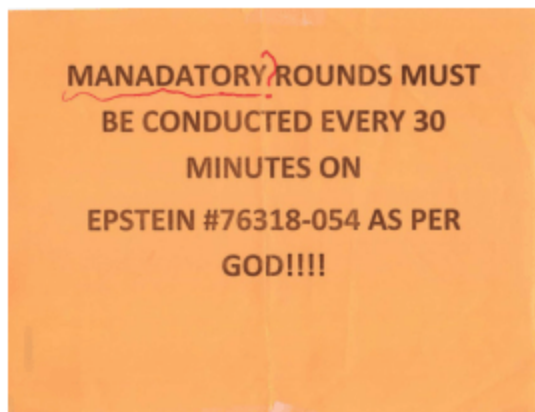
As detailed in the BOP Policies section of Chapter 2, in addition to inmate counts, BOP policy and MCC New York SHU Post Orders required that COs assigned to the SHU conduct rounds to observe all inmates at least twice an hour. As part of their assigned duties, MCC New York SHU officers had to walk each of the tiers of the SHU twice an hour on an irregular schedule, once during the first 30 minutes and again during the second 30 minutes, with both rounds occurring no more than 40 minutes apart. COs working in the SHU were required to complete and initial an official MCC New York form, often referred to as a “round sheet,” which was reviewed and signed by a supervisor, documenting the date and time of each 30-minute round in each tier of the SHU.⁴⁰

The Day Watch SHU Officer in Charge told the OIG that SHU staff spoke about conducting rounds on Epstein every day. He said that the Warden, Lieutenants, and other MCC New York staff members frequently told the SHU staff to conduct rounds and to keep an eye on Epstein. To reinforce this message, the Day Watch SHU Officer in Charge created a sign on orange paper that he hung on a computer in the SHU officer’s area that said, “MANADATORY [sic] ROUNDS MUST BE CONDUCTED EVERY 30 MINUTES ON EPSTEIN # 76318-054 AS PER GOD!!!!” The Day Watch SHU Officer in Charge said the sign was hanging on the computer on August 9 and 10, 2019, and it was clearly visible to everyone who worked in the SHU. The Acting Evening Watch Activities Lieutenant confirmed that written instructions to conduct rounds on Epstein were posted on the SHU computer.

⁴⁰ This BOP form is officially entitled “MCC New York, Special Housing Unit, 30 Minute Check Sheet.”

Figure 5.2

**Sign Created by the Day Watch
SHU Officer in Charge**



Note: The image has been modified for privacy reasons.

Source: BOP

The Evening Watch SHU Officer in Charge told the OIG that Noel filled out the round sheet on behalf of everyone who was working in the SHU during his shift. The Evening Watch SHU Officer in Charge was not certain if all of the rounds were actually conducted. The Material Handler said he believed the rounds listed on the round sheet as having occurred between 4:01 p.m. to 7:36 p.m. probably had been done, but he was uncertain about the remaining rounds. The Material Handler said he had seen officers “blow off” 30-minute rounds in the past. Noel told the OIG that, as a general practice, when the COs went to the various SHU tiers to distribute food or supplies, they counted that as a round. Noel said she was aware that she was supposed to conduct two rounds every hour during their shift, but that she had never actually completed rounds every 30 minutes while working in the SHU. When asked which rounds she conducted on August 9, 2019, Noel responded, “That’s hard for me to tell because I didn’t conduct it every 30 minutes. It was give out food, pick up the trays, give out toilet paper, go down. So those were the rounds I conducted.” Noel verified that her initials were on the round sheets for August 9 and 10, 2019, and said, consistent with her usual practice, she filled out the round sheets and initialed the round sheets at the start of the 4 p.m. and the 12 a.m. shifts.

Noel and Thomas both admitted to the OIG that they did not conduct any of the rounds reflected on the SHU Round Sheet on August 10, 2019, from 12 a.m. until Epstein was found hanged in his cell at approximately 6:30 a.m. Nonetheless, Noel completed and signed more than 75 separate 30-minute entries stating that she and Thomas had, in fact, conducted such rounds.⁴¹ Through review and analysis of the SHU video footage, witness statements, and BOP records, the OIG determined that Noel and Thomas did not enter the tiers in the SHU to conduct any of the rounds and counts between 12 a.m. and approximately 6:30 a.m. on August 10. Noel and Thomas can be seen at the SHU Officers’ Station, moving in the SHU common area, and in the SHU laundry and entrance/exit area throughout the morning of August 10. Additionally, from approximately 1 a.m. to 3 a.m., Noel and Thomas were seated at the SHU Officers’ Station without moving and appeared to be sleeping. OIG analysis of the activity on the SHU computers revealed that Noel used the computer periodically throughout the night, including to search the Internet for furniture sales and benefit websites and to read a news article about Epstein. Thomas used the computer briefly around 1 a.m. and 6 a.m. to search for motorcycle sales and sports news.

Noel told the OIG that she went through each tier in the SHU at approximately 10 p.m., and at the time she went to Epstein’s cell and saw him laying on a mattress on the floor, which she said was typical for him. Epstein asked Noel for his medical device, so she plugged it in for him. Noel saw that Epstein was in the cell by himself and without a cellmate, but she maintained that she did not know that Epstein was required to have a cellmate. Noel told the OIG that Epstein’s cell was approximately 15 feet away from the SHU Officers’

⁴¹ Each of the 6 tiers in the SHU had a separate round sheet, each of which had 13 entries reflecting 30-minute rounds were conducted, when they were not, in fact, completed.

Station. Noel said that during her shift on August 10, 2019, no one went to Epstein's cell and no one other than the Morning Watch Operations Lieutenant and CO 3 came into the SHU.

Through review and analysis of the SHU video footage, witness statements, and BOP records, the OIG determined that at approximately 10:40 p.m. a CO, believed to be Noel, carried linen or inmate clothing up to the L Tier, which was the last time any CO approached the only entrance to the SHU tier in which Epstein was housed.

2. Lieutenant Rounds

BOP policy requires that a Lieutenant visit the SHU during each shift to ensure that all procedures are being followed. BOP training for new Lieutenants instructs that the Operations Lieutenant must visit the SHU at least once per shift and "[t]his visit will be substantially more than just entering the unit, signing the log book, and talking with staff." Additionally, when the SHU Lieutenant is unavailable, the Operations Lieutenant should make rounds in the SHU on each shift. The training instructs that while in the SHU the Operations Lieutenant must walk each range (tier), inspect logs and records, observe activities, and periodically observe SHU inmate counts. The training further outlines that the SHU Lieutenant is responsible for the direct supervision of the unit, including enforcement of rules, review of paperwork, coordination of activities, movement of inmates, and cell searches. The SHU Lieutenant should make rounds on the ranges (tiers) each day.

The statements of multiple witnesses were consistent with BOP training materials. The Northeast Regional Director, the Warden, Associate Warden 1, the Captain, and the Day Watch SHU Officer in Charge all told the OIG that Lieutenants should have walked down all of the SHU tiers when conducting a Lieutenant round in the SHU. Noel said the SHU Lieutenant walked the tiers all the time, however, other Lieutenants did not always walk down the tiers. Multiple witnesses also told the OIG that it was standard practice for the BOP to store the SHU round sheets at the end of each tier in the SHU. This practice was designed to ensure that the assigned COs and Lieutenants walked down each tier when conducting rounds to observe every cell and inmate during the round before initialing the round sheet. On August 9 and 10, 2019, however, the MCC New York SHU round sheets were kept at the SHU Officers' Station in the common area of the SHU rather than at the end of each tier.

None of the Lieutenant rounds conducted on August 9 and 10 alerted the supervisory staff to the fact that Epstein lacked a cellmate. According to MCC New York records, the Day Watch Activities Lieutenant conducted a round in the SHU at 11:27 a.m. on August 9. The Day Watch Activities Lieutenant said he did not specifically recall if he conducted a round in the SHU, but he believed that he did conduct the round. As discussed in greater detail above, the Day Watch Activities Lieutenant told the OIG that he did not know that Epstein's cellmate had been removed from MCC New York or that Epstein was without a cellmate during his shift on August 9. The Acting Evening Watch Activities Lieutenant told the OIG that she conducted a Lieutenant round in the SHU on August 9 sometime between 5 p.m. and 8 p.m. The Acting Evening Watch Activities Lieutenant told the OIG that she did not know that Epstein's cellmate had departed from MCC New York or that Epstein required a cellmate because she was only the Acting Activities Lieutenant and had not attended SHU or department head meetings. The Evening Watch Operations Lieutenant reviewed the August 9 round sheets and said that although his signature is on one of the forms as if he conducted a round in the SHU, it was actually the Acting Evening Watch Activities Lieutenant who had conducted the round. The Evening Watch Operations Lieutenant said he did not know why his signature was on the form

because he did not conduct any rounds within the SHU on August 9 and he did not recall signing the form. The Morning Watch Operations Lieutenant confirmed that she conducted her round in the SHU at approximately 4 a.m. on August 10. The Morning Watch Operations Lieutenant said she went up to the 10 South Unit and then back down to the SHU because she needed to sign the round sheets. Contrary to BOP training for new Lieutenants, which she attended in 2011, the Morning Watch Operations Lieutenant told the OIG, "We are not required to go to each individual cell and look at the inmates. When we make rounds, we get with the officers." The Morning Watch Operations Lieutenant said she did not conduct a round to observe the inmates when she visited the SHU. Noel confirmed that the Morning Watch Operations Lieutenant visited the SHU but did not walk down the tiers.

Through review and analysis of the SHU security camera video, witness statements, and BOP records, the OIG determined that at approximately 4 a.m. on August 10, 2019, the Morning Watch Operations Lieutenant briefly visited the SHU as part of her supervisory duties and conferred with Noel and Thomas, who were seated at and around the SHU Officers' Station in the common area of the SHU. Noel told the OIG that at approximately 5:30 a.m., Thomas went to the 10 South Unit, which was adjacent to the SHU, to relieve CO 3, and that CO 3 briefly walked through the SHU common area as he left and returned from his break. The OIG's review and analysis of the video footage revealed that, aside from those two officers, no one entered the SHU and no one conducted any counts or rounds.

VI. Epstein's Death on August 10

A. Discovery of Epstein Hanged in Cell and Emergency Response

On August 10, 2019, shortly after 6 a.m., the doorbell to the SHU rang, indicating that a delivery of breakfast carts had arrived at the SHU. Noel and Thomas retrieved the breakfast carts from the double-locked entrance to the SHU and brought them inside the SHU. At the time, Thomas and Noel were the only officers in the SHU. At approximately 6:30 a.m., MCC New York security camera video recordings show Noel and Thomas walking toward the L Tier. Noel and Thomas told the OIG that at this time they were entering the L Tier, in which Epstein was housed, to deliver breakfast to the inmates. As discussed previously, between approximately 10:40 p.m. on August 9 and approximately 6:30 a.m. on August 10, the OIG did not observe on the available recorded video any COs or other individuals approach the L Tier where Epstein was housed from the common area of the SHU.

Noel told the OIG that she unlocked the door to the L Tier so Thomas could deliver the breakfast trays. Thomas told the OIG that he knocked on Epstein's cell door, saw a portion of Epstein through the window but could not make out what he saw, so he said to Epstein, "Come to the door, come to the door." Thomas said he did not observe any movement or hear a response, so he unlocked the cell door, entered the cell, and saw Epstein hanged as described further below. Thomas said he immediately yelled for Noel to get help, and that Noel activated a body alarm, signaling a medical emergency, and began taking the steps described below.

Figure 5.3

**Photograph of a Piece of Orange Cloth
Hanging from the Bunkbed in
Epstein's Cell Following His Death**



Source: Office of the Chief Medical Examiner,
City of New York

Thomas explained that when he first entered Epstein's cell, Epstein had an orange string, presumably from a sheet or a shirt, around his neck. The end of the string was tied to the top portion of the bunkbed. Epstein was suspended from the top bunk in a near-seated position, with his buttocks approximately 1 inch to 1 inch and a half off the floor and his legs extended out straight on the floor. Thomas said Epstein did not look discolored or very different from when he last saw Epstein alive. Thomas said he immediately ripped the orange sheet or shirt away from the bunkbed, and Epstein's buttocks dropped approximately 1 inch to 1 inch and a half to the ground. Thomas then lowered Epstein's entire body to the floor and, because he did not believe Epstein was breathing, Thomas immediately began providing chest compressions until responding MCC New York staff members arrived approximately 1 minute later. Thomas said he did not provide rescue breaths and was unaware if Epstein was dead or alive because he never checked for a pulse before initiating chest compressions. Thomas said medical personnel took over the emergency response, including chest compressions and use of an automated external defibrillator (AED), when they arrived. Thomas said he assisted with bringing Epstein down to the Health Services Unit on the second floor, and that he left MCC New York at approximately 8 a.m. Thomas said he had received cardiopulmonary resuscitation (CPR) training during MCC New York annual refresher training and had responded to medical emergencies in the past, but this was the first time he was the first responder.

Thomas said he was present in the SHU for his entire shift on August 10, 2019, from 12 a.m. until the time he attempted to deliver breakfast to Epstein at approximately 6:30 a.m. and

did not see anyone go inside Epstein's cell during his shift. Thomas said that he would have known if someone went in or out of Epstein's cell and said no one did. Thomas told the OIG that he could see Epstein's cell door from the SHU Officers' Station, but he could not see inside the cell from that vantage point. Thomas said that it was not possible for anyone to have entered the SHU without his knowledge because he or Noel would have had to open the SHU door for anyone to gain entry. The only other key to the SHU was located elsewhere in the institution; no other MCC New York staff members had the keys required to gain access to the SHU. Moreover, Thomas said that anyone attempting to access the L Tier where Epstein was located would have had to walk directly in front of the SHU Officers' Station where Thomas was seated, and no one did. Thomas denied that he or Noel had any role in Epstein's death.

Noel told the OIG that on the morning on August 10, when it was time to deliver food to the inmates, she unlocked the door to the L Tier and stood by it while Thomas took the food to the inmates. Noel said that when Thomas knocked on Epstein's door, there was no response. Noel said Epstein's cell door was locked, so Thomas used a key to open it and went inside. Noel heard Thomas call out for her to retrieve the cutter

and then she heard Thomas rip something. Noel said she observed Thomas lifting Epstein from under his arms and dragging him back out of the corner of the cell and laid him down on the ground to perform CPR. According to Noel, within seconds of Thomas calling out for the cutter she hit the body alarm, which is a button on an MCC staff member's radio that is used to signal distress or an emergency. Noel recalled hearing Thomas say, "Breathe, Epstein, breathe," and "We're going to be in so much trouble." Noel said she stood at the door about a foot away from Epstein's cell and never went in. Noel said Thomas only performed chest compressions and said she did not see Thomas checking for breath or pulse. Noel said that when she saw Epstein, he looked blue and did not have a shirt on or anything around his neck. Noel said she did not get the cutter because Thomas did not need it based upon the ripping sound she heard.

Noel said an MCC New York Lieutenant who responded to the alarm asked her what happened, and before she got the chance to answer, Thomas stated, "Oh, it's not her fault, we fucked up." Noel did not recall making any comments or statements to the Lieutenant. Other than the Lieutenant, Noel did not recall which COs responded to the alarm and she did not know what happened in the cell after MCC New York staff arrived because she was waiting at the bottom of the steps outside the L Tier. Noel said she was alone in the SHU for 20 minutes after they left with Epstein and she kept calling the Control Center to get status updates.

Noel told the OIG that Epstein's cell was approximately 15 feet from the SHU Officers' Station. Noel said she would have known if someone went in or out of Epstein's cell overnight and no one did. She also said that there was no indication that any of the inmates could have gotten out of their cells. Noel said she never slept during her shift on August 9-10, 2019. Noel said that when she is seen on the camera at the desk not moving, she was on the computer. Noel then clarified by saying that she worked 5 days of overtime leading up to her shift, so she would begin to doze off; however, she caught herself and never slept.

The Lieutenant told the OIG that he was the Operations Lieutenant who relieved the Morning Watch Operations Lieutenant on August 10, 2019, at approximately 5:30 a.m. The Lieutenant said that at approximately 6:33 a.m., he heard a call for a medical emergency in the SHU and immediately responded to the alarm. When he arrived, Noel told him, "Epstein hung himself." Once inside, the Lieutenant observed that Thomas was performing CPR on Epstein. The Lieutenant stated that he asked, "Where's his bunkie at?" and that Noel responded, in substance, that Epstein did not have a cellmate. Noel also told the Lieutenant, "We didn't do rounds at 3 a.m. and 5 a.m." Thomas stated, "We didn't do the rounds. We messed up." The Lieutenant took over administering CPR and asked SHU staff to retrieve an AED and call for the duty nurse.

The MCC New York Electronics Technician told the OIG that he responded to the emergency call at 6:33 a.m. When the Electronics Technician first arrived in the SHU, Thomas and other MCC New York staff members were picking Epstein up and placing him on a stretcher. The Electronics Technician said he and Senior Officer Specialist 6 performed chest compressions on Epstein while he was on the stretcher and being transported to the Health Services Unit on the second floor.⁴² The Electronics Technician stated that he

⁴² Moving an inmate requiring outside emergency medical care to the Health Services Unit provides health care staff and Emergency Medical Technicians (EMT) with immediate access to any necessary medical equipment and supplies, and allows EMTs faster access to the inmate when they arrive at MCC New York because COs can directly escort EMTs to the Health Services Unit to begin emergency treatment immediately. If EMTs had to be escorted to the housing unit, they would first need to be thoroughly screened, which would delay medical attention.

then returned to the SHU and worked there for approximately 1 hour, along with the Morning Watch Operations Lieutenant and Noel. The Electronics Technician believed he was in the SHU prior to 7 a.m. and until approximately 8 a.m., but he was not positive with regard to the times. The Electronics Technician said he delivered food to the inmates on one tier while the Morning Watch Operations Lieutenant did the same on another tier while Noel unlocked the doors outside of the tiers for the Electronics Technician and the Morning Watch Operations Lieutenant. The Electronics Technician said that when they were delivering food to the inmates, he heard the inmates saying, "You killed him. You weren't making rounds. You killed him." The Electronics Technician told the OIG that the inmates also said Thomas and Noel just sat at the SHU Officers' Station and never checked on the inmates. The Electronics Technician told the OIG he understood the inmates to be saying that Thomas and Noel were responsible for Epstein's death because they had not conducted rounds during their shift. The Electronics Technician said he believed that Epstein took his own life and said he had no reason to believe otherwise.

Senior Officer Specialist 6 said he responded to the emergency call at 6:33 a.m. and when he arrived, staff members were already performing CPR on Epstein. Senior Officer Specialist 6 said he assisted with transporting Epstein to the Health Services Unit, taking Epstein to the ambulance, and then followed the ambulance to the hospital in another vehicle, and stayed at the hospital until he was relieved from duty.

The OIG also reviewed photographs that were taken in the MCC New York Health Services Unit of EMTs attempting to resuscitate Epstein. The photographs show, among other things, Epstein on his back with an intravenous line in his arm, his orange BOP-issued shirt ripped open and laying around his arms, and him wearing orange BOP-issued boxer shorts. None of the photographs taken at MCC New York show Epstein in a hospital gown, although the OIG did review photographs taken at New York Presbyterian Lower Manhattan Hospital which show Epstein in a hospital gown.

Additionally, the OIG participated in interviews of three inmates assigned to the same SHU tier as Epstein at the time of his death and who were housed in cells opposite Epstein's cell and therefore had a direct line of sight to Epstein's cell.⁴³ One such inmate was Inmate 5, who was assigned to a cell directly across from Epstein's cell on the left side of the tier and who told the OIG that he could see all the cells on the right side of L Tier, where Epstein was housed. Inmate 5 believed a count was last conducted within the SHU on August 9, 2019, a little before 12 a.m., and said that no additional count was conducted after that time. Inmate 5 did not see anyone, or hear anyone, go into Epstein's cell on the night of August 9 or the morning of August 10 prior to a male CO discovering Epstein on the morning of August 10. Inmate 5 said the male CO knocked on Epstein's assigned cell, looked in, and then opened the door. Inmate 5 could only see Epstein's legs from the knee down but could tell that Epstein was laying down on his back because his feet were pointed upward. The male CO bent down to shake Epstein and was saying, "Epstein, Epstein." The male CO then tried to pick up Epstein from behind, with his arms wrapped around Epstein. Inmate 5 said both the officer and Epstein fell back to the floor, with Epstein falling to the side of the officer. Inmate 5 said that once the two fell, he could then see that it was Epstein. The CO then started giving Epstein chest compressions and mouth-to-mouth resuscitation. At this point, the officer said, "Fuck!" and asked the female CO, who was standing near the L Tier gate, if she has pressed the button. The female officer said, "Yeah, a long time ago." A Lieutenant then arrived at Epstein's cell along with a male nurse who tried to

⁴³ As noted previously, the U.S. Attorney's Office for the Southern District of New York sought interviews from all of the inmates housed in the L Tier of the SHU on the night that Epstein died.

revive Epstein. Epstein was not responsive. Inmate 5 said Epstein looked dead when the male CO tried to pick him up and they both fell. Inmate 5 said officers had trouble getting Epstein onto the stretcher because Epstein was basically dead weight. When the officers did get Epstein on the stretcher, Epstein still had on headphones.⁴⁴ Inmate 5 did not see any marks around Epstein's neck, and he did not see a rope around Epstein's neck. However, Inmate 5 saw a male CO come out of Epstein's cell with a sheet that had a loop and knot.

Figure 5.4

Location of the Cells Assigned to Inmates 5-7 in Relation to Epstein's Cell in the L Tier



Source: DOJ OIG schematic drawing depicting the MCC New York SHU

Inmate 6 told the OIG that on August 9 and 10, 2019, he was housed within the SHU on L Tier in a cell directly across from Epstein's cell. Inmate 6 last saw Epstein's cellmate, Inmate 3, on August 9 when Inmate 3 said, "See you later. I'm going to court." Inmate 6 said Inmate 3 did not return that night and said the SHU officers never conducted their required 30-minute rounds. Inmate 6 believed the COs last checked on the inmates in the SHU on August 10 between 12:30 a.m. and 1 a.m. Inmate 6 did not observe anyone entering Epstein's cell after Epstein returned from his legal visit on August 9, 2019; did not hear noise that night; and said Epstein's door was not opened during the night. Inmate 6 said a male officer discovered Epstein dead during breakfast delivery on August 10. Inmate 6 said he observed the male CO entered Epstein's cell and began performing CPR, while the female CO, who appeared panicked, stayed outside of the cell. Inmate 6 said he observed Epstein on the floor but did not see a rope over Epstein's head. However, when Epstein was removed from his cell, Inmate 6 observed the COs holding a rope and a

⁴⁴ An MP3 player with headphones was obtained as evidence by the Federal Bureau of Investigation (FBI).

defibrillator. Inmate 6 did not see marks on Epstein's neck but did see bruising on his face and observed earphones that were still in place on Epstein's ears.

Inmate 7, who was two cells down from Epstein's cell and on the other side of the tier, told the OIG that he could not see into Epstein's cell but he could see the cell door. Inmate 7 said that after dinner was brought to Epstein's cell on the evening of August 9, 2019, Inmate 7 did not recall seeing anyone going in or out of Epstein's cell until the following morning at around 6 a.m. He further stated that he did not hear any door "pop open" that evening. Inmate 7 said he remembered waking up around 6 a.m. on August 10, 2019, and hearing a voice, possibly male, saying "Breathe." Inmate 7 said he saw Epstein removed from his cell on a stretcher.

In addition, the OIG and the Federal Bureau of Investigation (FBI) interviewed seven inmates assigned to other tiers in the SHU, none of whom had any direct knowledge of how Epstein died. These inmates consistently reported that the SHU officers did not systematically conduct the counts and rounds as required on the evening Epstein died and that the last round was either between 9:30–10 p.m. or 12:30–1 a.m. Several inmates told the OIG that before Epstein died the SHU staff never conducted rounds at night.

According to the BOP Form 583 Report of Incident, on August 10, 2019, at approximately 6:33 a.m., while delivering the breakfast meal, Epstein was found unresponsive in his cell. Consistent with the required response to a suspected suicide outlined in the MCC New York General Housing Unit Post Orders that are described in Chapter 2, staff called for assistance and began life-saving measures.⁴⁵ At 6:39 a.m., Epstein was taken to the MCC New York Health Services Unit, and Emergency Medical Services (EMS) arrived to MCC New York at 6:43 a.m. Epstein was transported to the local hospital, New York Presbyterian Lower Manhattan Hospital, at 7:10 a.m., and was pronounced deceased at 7:36 a.m.

According to a memorandum attached to the Form 583 from the Clinical Nurse dated August 10, 2019, when the medical emergency involving Epstein was called over the radio, the Clinical Nurse immediately responded to the call and upon arrival, saw Epstein on the floor within his cell unresponsive with CPR in progress by COs. The Clinical Nurse's memorandum reads that Epstein was cold, with circumferential bruising around his neck and posterior mottling, pupils fixed and dilated, and no palpable pulses were felt. According to the memorandum, at 6:35 a.m., a call was placed for EMS, CPR continued, and an AED was utilized and indicated "No Shock Advised," so CPR continued. Epstein was then transported to the MCC New York Health Services Unit treatment room with CPR in progress. Upon arrival, Epstein's pulse was checked, and the AED indicated "No Shock Advised." EMS and paramedics arrived on the scene, intubated Epstein, and gave him medications and fluids.⁴⁶ Epstein was transported to the local emergency room with CPR in progress at approximately 7:10 a.m.

⁴⁵ As noted in Chapter 2, BOP policy provides that the need to immediately attend to an apparent suicide victim, undertake lifesaving measures, and ensure inmate and staff safety take precedence over efforts to preserve a crime scene.

⁴⁶ The EMS arrival time on the Clinical Nurse's memorandum is listed as 6:56 a.m. Based on the OIG's review of other documentation and interviews, we believe the arrival time reflected on those other documents (6:43 a.m.) is more likely the time of EMS's arrival. We noted that the Clinical Nurse, at the time of EMS's arrival, was actively engaged in administering CPR to Epstein and responding to the health emergency.

According to a memorandum attached to the Form 583 from the Correctional Systems Officer dated August 10, 2019, after Noel called the medical emergency, the Correctional Systems Officer received a call from staff in the SHU instructing her to call 911 for an ambulance. The Correctional Systems Officer notified the New York Police Department (NYPD) via the MCC New York institutional NYPD telephone. The Correctional Systems Officer then informed NYPD that MCC New York needed an ambulance and medical assistance for one of the inmates. The New York City Fire Department and EMS arrived at MCC New York at 6:43 a.m. and were escorted to the second-floor medical area. EMS departed MCC New York with Epstein and a BOP escort via ambulance and chase car to the local hospital at 7:10 a.m.

The Morning Watch Operations Lieutenant told the OIG that she was relieved as the Operations Lieutenant prior to 6 a.m. on August 10, 2019, but was still working on things like the Daily Activity Reports and Lieutenant Logs that she did not get to finish during her shift. At some point, the Morning Watch Operations Lieutenant heard that there was a medical emergency in SHU, so she went to assist because she knew that inmates would need to be given food and other things would need to be done. The Morning Watch Operations Lieutenant estimated that she went to the SHU around 7 a.m. to help with the inmate meals, and believed the Electronics Technician was also helping out. Noel was there, but she was not helping with delivering food to the inmates. The Morning Watch Operations Lieutenant said that after the meals were delivered, she finished up and went home.

All MCC New York staff members who were interviewed by the OIG said they did not know of any information suggesting that Epstein's cause of death was something other than suicide. Additionally, no inmate provided the OIG with information suggesting that anyone assisted Epstein with taking his own life or had any credible information suggesting that Epstein's cause of death was something other than suicide. Some MCC New York staff told the OIG that Epstein's death could have been prevented if, among other things, Epstein had been assigned a new cellmate after Inmate 3's departure and rounds and counts had been conducted in the SHU as required. Some witnesses also faulted MCC New York staffing shortages, which resulted in excessive overtime and meant that MCC New York staff members were often overtired during their shifts. Other MCC New York staff members told the OIG that even if inmate safety and accountability measures had been properly executed, an inmate who wanted to take his life would have found a way to do so.

B. Items Found in Epstein's Cell on August 10 Following His Death

Following Epstein's death, the BOP and FBI collected many of the items found inside Epstein's cell. The FBI inspected the cell and retrieved what it believed to be relevant to its investigation into the cause of Epstein's death, which included one torn sheet, miscellaneous papers, and an MP3 player. The FBI did not recover any weapons inside of the cell. After the FBI's inspection, the BOP recycled the linens from Epstein's cell and collected the remaining items, which included various over-the-counter medications, books (including religious books), BOP pamphlets, toiletries, batteries, headphones, glasses, mail and envelopes, a brown paper bag, an orange homemade rope, AED pads, and a medical device.

Figure 5.5

Photograph of a Piece of Orange Cloth Tied into a Noose Recovered from Epstein's Cell After His Death⁴⁷



Source: Office of the Chief Medical Examiner, City of New York

The photographs of Epstein's cell on August 10, 2019, show an excess of blankets, linens, and clothing. Some of the linens had been ripped into thin strips, which were tied to the desk and bunkbed inside the cell. Some of the strips were tied like a noose. When shown a picture of Epstein's cell, Noel verified that it contained a lot of linen and extra clothing. Noel said the mattress on the floor was Epstein's, as he always slept on the mattress on the floor. As detailed in the BOP policies section of Chapter 2, MCC New York SHU Post Orders required that COs assigned to the SHU during the daytime tours of duty conduct at least five cell searches each day, and that the entire SHU, including all common areas and cells, be searched every week. The OIG investigation revealed, however, that on August 9, 2019, the SHU staff logged only one cell search in TRUSCOPE, and the search was not of Epstein's cell.⁴⁸ BOP records did not indicate when Epstein's cell was last searched.

inmate departs the cell. He said the SHU Officer in Charge was responsible for making sure the searches were conducted and logged into the BOP TRUSCOPE database. The Day Watch SHU Officer in Charge said that only one cell search was entered into TRUSCOPE on August 9, 2019, because cell searches were tedious to enter, and he was busy. He did not believe that it was a problem that only one cell search was logged on August 9 because he said the SHU staff would have gone into every cell when the inmates took their showers. He said that during the period of Epstein's custody, SHU inmates showered on Mondays, Wednesdays, and Fridays. The Day Watch SHU Officer in Charge said that during showers, SHU staff searched every cell. He explained that all of the SHU cells should have been searched on Friday, August 9 because it was a shower day. He said SHU staff should also conduct cell searches when inmates go to the recreation area or for attorney visits. According to the Day Watch SHU Officer in Charge, Epstein's cell should have been searched because both Epstein and Inmate 3 left the cell on the morning of August 9. He further stated that he believed that the majority of cells in the SHU were searched although, as noted above, the SHU staff logged only one cell search in TRUSCOPE on August 9 and the search was not of Epstein's cell.

⁴⁷ As noted previously, Epstein's cell contained an excessive amount of linens, some of which had been ripped into thin strips and tied like a noose. Figure 6.5 depicts one such noose, which is illustrative of the types of linens found in Epstein's cell; the noose depicted is not the ligature Epstein used to kill himself.

⁴⁸ TRUSCOPE is a BOP database that provides institution staff with detailed inmate and institution security-related information and provides unit officers an electronic event log.

Figure 5.6

**Photograph of Epstein's Cell After
His Death**



Source: Office of the Chief Medical Examiner,
City of New York

issue because it “gives the inmates the materials to be able to make homemade fashioned and improvised nooses” or “use it as escape paraphernalia,” such as a rope that inmates had used to escape from another facility in Chicago.

Inmate 3 told the OIG that Epstein was allowed to sleep on the floor, which he said was unusual for the SHU where that was not normally allowed. Inmate 3 said Epstein also had two extra blankets, which no other inmate had, as well as two pens, which inmates were not allowed to have. Epstein would ask for things, and if the COs said no, Epstein would tell them he was writing down their name and providing the information to his lawyer. According to Inmate 3, the COs were on “eggshells” around Epstein. Inmate 3 said that when he left the SHU on August 9, 2019, there was an orange cloth twisted around the ladder, strings on the side of the ladder, and a string tied across the bed. Inmate 3 explained that the string tied across the bed served as a clothesline, and that the strings were part of a sheet they had ripped. According to Inmate 3, one night he woke up, saw Epstein fidgeting with the clothesline, and asked Epstein what he was doing. Epstein said he was trying to fix the clothesline, but Inmate 3 told him no and flushed the clothesline down the toilet. As discussed in Chapter 4, when Inmate 3 and Epstein first became cellmates upon Epstein’s return to the SHU

The Day Watch SHU Officer in Charge told the OIG that in August 2019, each inmate would have been authorized to have two sheets and one blanket. He said that in the winter, inmates are allowed to have an additional blanket. When interviewed by the OIG, the Day Watch SHU Officer in Charge reviewed a picture of Epstein’s cell from August 10, 2019, after Epstein had been removed from the cell. The Day Watch SHU Officer in Charge said there appeared to be an excess number of linens and blankets in the cell, which he believed were for both Epstein and Inmate 3, and that there were possibly a couple of extra sheets as well. He noted that there were two mattresses in the cell and deduced that Inmate 3’s assigned items had not yet been removed even though he had departed MCC New York earlier that day. According to the Day Watch SHU Officer in Charge, Inmate 3’s items should have been removed as soon as the SHU staff knew Inmate 3 was not returning. He told the OIG that any extra linens or blankets should be removed when the inmates take showers and their cells are searched. He told the OIG that he believed the purpose of limiting the linens provided to the inmates was to ensure there was enough to go around and that it was more of an administrative matter rather than a security matter.

The Captain also reviewed the picture of Epstein’s cell from August 10, 2019, when interviewed by the OIG. He said Epstein had too many linens, t-shirts, and blankets in his cell. The Captain said the SHU staff were responsible for removing those items because they did not want to hear the other inmates complain that they were not issued the same number of items. The Captain stated that it is also a security

following suicide watch and psychological observation, Inmate 3 asked Epstein not to kill himself while Inmate 3 was his cellmate because Inmate 3 had a chance to go home soon. In response, Epstein told Inmate 3 not to worry and that he was not going to cause him any trouble.

When Inmate 3 left on August 9, he told Epstein that he would leave the clothesline in the cell so that Epstein could wash his clothes. Inmate 3 did not say anything about a noose having been in the cell, but he said there were five blankets in their cell when he left.

C. Autopsy Results

On August 11, 2019, the Office of the Chief Medical Examiner, City of New York, performed an autopsy on Epstein and determined that the cause of death was hanging and the manner of death a suicide. One of the office's Medical Examiners performed the autopsy, and the autopsy report was reviewed by the First Deputy Chief Medical Examiner. In connection with this investigation, the OIG interviewed the Medical Examiner who performed the Epstein autopsy (hereinafter the "Medical Examiner"). The Medical Examiner told the OIG that the pattern of Epstein's neck bone fractures was consistent with a hanging. The Medical Examiner explained that a different fracture pattern is present if there has been a manual compression of the neck versus a sustained pressure like in a hanging, and the pattern of Epstein's neck fractures was that of a hanging. The Medical Examiner also said Epstein had petechial hemorrhages, which are pinpoint bleeds in skin, on his face and mouth. These hemorrhages are caused when the blood flow is obstructed and the small skin capillaries burst. The Medical Examiner additionally identified plethora, which is purple discoloration of the skin, and stated that both petechial hemorrhages and plethora are consistent with suicide by hanging. The Medical Examiner stated that Epstein's petechia and plethora were identified from his neck up. In homicidal strangulations, according to the Medical Examiner, these conditions are normally found only in the eyes and mouth, and in a different pattern. Epstein also had, the Medical Examiner explained, a marked and obvious ligature furrow that peaked upward which is consistent with suicide as opposed to a ligature strangulation.

The Medical Examiner further stated that there was no evidence of defensive wounds consistent with what is seen in victims of strangulation. The Medical Examiner told the OIG that in strangulation cases there is invariably some signs of a struggle, even if the victim is impaired. The Medical Examiner noted that the autopsy did not identify any signs of a struggle. Epstein did not have any marks on his hands (no broken fingernails, no debris under the fingernails, no contusions to his knuckles) that would have evidenced a fight, and, other than an abrasion on his arm likely due to convulsing from hanging, no bruising on his body. We also were told by the Medical Examiner that Epstein did not have strap muscle hemorrhages of the neck, which is bleeding in the lung muscles in the front of the neck. Nor did he have, the Medical Examiner told the OIG, hemorrhaging in the muscles in the back of his neck. The Medical Examiner explained that you would expect to see that hemorrhaging when there has been an incomplete compression as opposed to a sustained compression like a hanging.

In addition, the Medical Examiner determined that the cloth material of the ligature (noose) found in Epstein's cell could have caused the fractures and superficial injuries the Medical Examiner identified during the autopsy. The Medical Examiner also told the OIG that the ligature furrow was too broad to have been caused by the electrical cord of the medical device in Epstein's cell. The Medical Examiner said blood toxicology tests were conducted and no medications or illegal substances were identified in Epstein's system. The Medical Examiner stated that the ruling of Epstein's death a suicide was the Medical Examiner's

independent medical judgment and that the Medical Examiner was not pressured or otherwise subjected to any attempt to influence her ruling.

Chapter 6: The Availability of Limited Recorded Video Evidence Due to the Security Camera Recording System Failure

In August 2019, the Metropolitan Correctional Center located in New York, New York (MCC New York) had approximately 150 video security cameras (no audio) placed throughout the institution. The Office of the Inspector General (OIG) found that approximately 11 cameras were located in and around the Special Housing Unit (SHU) where Epstein was confined at the time of his death on August 10, 2019, including one at the end of the L Tier where Epstein was housed that showed any movement in or out of inmate cells and in the Tier's hallway. In addition to broadcasting live video, MCC New York had a system that recorded the live video feeds. Following Epstein's death, MCC New York officials and Federal Bureau of Investigation (FBI) investigators attempted to review video recordings related to the incident and discovered that, although the security cameras were working and transmitting live video, recorded video from most of the cameras in the SHU area was not available due to a malfunction of the video recording system that had occurred on July 29, 2019, including video from the camera at the end of the L Tier. As a result, while the L Tier video camera was transmitting a live video feed on the night of August 9, 2019, and morning of August 10, 2019, the video was not being recorded. One of the cameras that had available recordings from August 9 and 10 was a camera located outside a housing unit adjacent to the SHU. That camera captured video of a large part of the common area of the SHU, including the SHU Officers' Station and portions of the stairways leading to the different SHU tiers, including the L Tier. Thus, anyone entering or attempting to enter the L Tier from the common area of the SHU, including on August 9 and 10, would have been picked up by the video recorded by that camera. In addition, the recordings showed the SHU Officers' Station where the two SHU staff were seated at a desk immediately outside the entrance to the L Tier and diagonally across from Epstein's cell, which was the first cell on the righthand side of the L Tier.

I. Background on the Security Camera System at MCC New York

All video surveillance from MCC New York's cameras was connected to a Digital Video Recorder (DVR) system. The DVR system had two data storage systems that were labeled "DVR 1" and "DVR 2," and each consisted of 16 hard drives used for storing digital recordings. Roughly half of MCC New York's security cameras were assigned to record to DVR 1, and the other half were assigned to record to DVR 2. Cameras assigned to DVR 1 only recorded to the DVR 1 hard drives, and cameras assigned to DVR 2 only recorded to the DVR 2 hard drives. Therefore, if DVR 2 crashed, no video from the DVR 2-assigned cameras could be retrieved from DVR 1, and vice versa.

The OIG's investigation revealed a history of camera problems at MCC New York. In August 2019, the Electronics Technician was the only such technician at MCC New York. The Electronics Technician told the OIG that when he began work at MCC New York in 2016, he found that the facility's security camera system needed to be upgraded. According to the Electronics Technician, the system had not been properly maintained prior to his arrival, the hard drives in the DVRs frequently malfunctioned and needed to be replaced, and the overall system was outdated, in part because the cameras were analog and not digital.

The Electronics Technician told the OIG that, throughout his tenure at MCC New York, the camera system was subject to frequently recurring failures, particularly with respect to the DVR hard drives.⁴⁹

The Warden, who assumed his responsibilities at MCC New York in May 2018, told the OIG he was generally aware that there were problems with the security camera system throughout the institution. He further stated that efforts were undertaken to determine which cameras were working and which needed to be fixed, and that MCC New York officials intended to ultimately seek funding to replace the entire system. Federal Bureau of Prisons' (BOP) records reflect that on September 6, 2018, the Warden submitted a memorandum to the BOP's Northeast Regional Director to request \$800,000 in funding to replace the entire camera system. The memorandum identified an estimated project start date of December 1, 2018, and an estimated completion date of February 9, 2019. The BOP approved the funding request, and on September 21, 2018, a contract in the amount of \$698,108.99 was awarded to Company 1 to provide various equipment for the project and associated labor. On September 24, 2018, a separate contract in the amount of \$34,089.28 was awarded to Company 2 to provide assorted networking equipment and wiring needed to install the camera system.

As the camera upgrade project was beginning, BOP officials recognized that MCC New York's mechanical, electrical, and plumbing systems were also in need of major repairs. MCC New York did not have enough qualified technicians on staff to complete both the camera installation and other repairs needed at the facility, so beginning the week of March 17, 2019, the BOP's Northeast Regional Office arranged for technicians from other BOP institutions to conduct temporary duty (TDY) assignments at MCC New York to perform the work. During the course of the TDY rotations, work was not consistently conducted on the camera upgrade because sometimes TDY staff assigned to the project were used to cover shortages at MCC New York's custody posts, and sometimes there were not enough TDY volunteers who possessed the skills required to do the camera work.

At the time of Epstein's death on August 10, 2019, the camera system upgrade had not been completed. Immediately following Epstein's death, Company 1 officials arrived at MCC New York and installed the new recording system within a couple of days, and recording functionality was restored using the existing cameras. The majority of the new cameras did not arrive at the facility until October 2019, and they were installed in stages as the wiring work was conducted. According to the Electronics Technician, as of August 2021, when the MCC closed, the wiring work had still not been fully completed.

II. Discovery of Security Camera System Recording Issues in August 2019

A. Discovery on August 8 of the DVR 2 Failure that Occurred on July 29

According to forensic analysis conducted by the FBI after Epstein's death, disk failures occurred in MCC New York's DVR 2 system on July 29, 2019, which resulted in the system being unable to record. According to BOP records and OIG interviews, the BOP did not learn about the failure until August 8, 2019, when the Special Investigative Services (SIS) Lieutenant and Associate Warden 1 attempted to review recorded surveillance video for a matter unrelated to Epstein. The SIS Lieutenant told the OIG she discovered that no

⁴⁹ The Electronics Technician provided the OIG with copies of email messages and work orders that documented nine instances between June 2017 and July 2019, in which actions were taken to address a problem with either the MCC New York's cameras or the hard drives used to record video from the cameras.

recorded video was available for several of the institution's cameras, so she reported the matter to the Communications Office, and the Electronics Technician arrived to assess the problem sometime before his shift was scheduled to end. The Electronics Technician told the OIG that he found that roughly half of the institution's approximately 150 cameras, which were assigned to record to DVR 2, were displaying a live video feed but were not recording.

The Electronics Technician told the OIG that, before Epstein's death, no one was specifically tasked with ensuring that video from the cameras was being recorded. The Electronics Technician said he therefore did not perform any daily checks to ensure that video was being recorded. The Warden indicated that SIS staff are usually responsible for checking the system for recording functionality and reporting any problems to the Communications Office. However, the SIS Lieutenant told the OIG that it was her belief that the Electronics Technician should have been checking the system daily to ensure it was recording. The OIG found that there are no BOP policies that specifically state that institutional staff must perform periodic checks to ensure the camera system is fully functional or that security camera systems have the capacity to record.⁵⁰ The Facility Manager told the OIG that since Epstein's death, he now checks to ensure that all cameras and the recording system are working on a daily basis, and he subsequently provides a report about the status of the system to the facility's executive staff, the SIS, and the electronics technicians.

B. Response on August 8 and 9 to Discovery of the Recording Failure

On August 8, following discovery of the recording failure, Company 1 service request records reflect that the Electronics Technician contacted a Company 1 technical support representative, who ultimately determined that two hard drives within DVR 2 had failed. According to the Electronics Technician and the Company 1 service request record, the Company 1 representative informed the Electronics Technician that the two drives needed to be replaced and DVR 2 needed to be rebuilt in order for the cameras to record again. The Electronics Technician told the OIG that he informed a Company 1 Technician that he had to obtain the drives from MCC New York's Computer Services Manager. The Electronics Technician further stated that he left the institution at the end of his shift and did not obtain the hard drives and did not continue to work on the matter. The Electronics Technician told the OIG he had "no idea" why he did not stay at the facility to resolve the problem that day, but he noted for the OIG that he had not historically been required to stay after his shift ended to work on such matters, and even if he had begun working on the DVR that day, he would not have completed the work on August 8 due to the time the rebuilding process takes.⁵¹

The OIG found that the Electronics Technician's immediate supervisor, the Facility Manager, was on leave that week and therefore was not told on August 8 about the DVR recording failure. The Facility Manager confirmed that he did not learn about the camera problem until days after Epstein's death. The Electronics Technician told the OIG that he did not report the problem to the Lock and Security Supervisor, who was the Acting Facility Manager in the Facility Manager's absence. The SIS Lieutenant told the OIG that after the Electronics Technician had examined the system on August 8, the Electronics Technician informed her that cameras were not recording and said, "I'm going to stay and do overtime tonight." Based on his comment,

⁵⁰ For example, BOP Program Statement 5500.15, Correctional Services Manual, states generally that the Warden must establish a security inspection system that involves all departments but does not specifically address security camera systems. This program statement is a restricted policy that is not released to the public in its entirety.

⁵¹ According to open source information on digital data storage system rebuilds, the rebuilding process can take up to several days to complete depending on the number of hard drives that were damaged and the storage capacity of each.

the SIS Lieutenant assumed that the Electronics Technician would remain at the institution after his shift ended that day to correct the issue. The Electronics Technician told the OIG there must have been some miscommunication because he did not say he was going to work overtime and resolve the problem that same evening since he knew the problem could not be fixed in one evening. The Electronics Technician told the OIG that, in hindsight, he should have stayed at the institution to begin work on the problem that same day.

The SIS Lieutenant told the OIG that she verbally informed the Captain on August 8 that the cameras were down, but BOP records reflect that the Captain left the institution before the malfunction was discovered. The Captain told the OIG that he did not learn about the DVR recording issue until after Epstein's death on August 10 when he asked to see video related to the Epstein incident. Associate Warden 1 confirmed she was with the SIS Lieutenant on August 8 when the camera problem was discovered, but she told the OIG she only knew video could not be replayed. She did not know the recording system for certain cameras was down. She could see live video from the cameras on that date, and therefore assumed they were recording.

According to the Electronics Technician, after he reported to work on August 9, 2019, and attended to other matters throughout the day, the Electronics Technician obtained the replacement hard drives and attempted to perform the repair sometime late in the day. However, the Electronics Technician told the OIG that no SIS staff were present at that time to give him access to the room in which the DVR room was located, so he requested access from the only other individual who had a key to the space, Correctional Officer (CO) 4.⁵² According to the Electronics Technician, CO 4 denied him access to the room because CO 4's shift was ending at 4 p.m., and CO 4 was unable to stay and accompany him in the space while the Electronics Technician performed the work. According to the Electronics Technician, CO 4 said he would be at the institution the following day to provide the Electronics Technician access to the room, so the Electronics Technician decided to postpone the repair until the following day. The Electronics Technician said his decision was influenced by the fact that he had historically been told by MCC New York supervisors that such matters did not have to be attended to until the following day, and even if he had replaced the hard drives that day, the rebuilding process would have taken 24 hours to complete and would therefore not have finished until the following day anyway.

C. SHU Camera Locations and Operational Status on August 10

The Electronics Technician arrived at the institution around 6 a.m. on August 10, 2019, and shortly thereafter, before he could begin working on the DVR system, he heard the staff body alarm sound and he reported to the SHU to assist. Later that day he was asked to pull potential video from cameras located in and around the SHU. The Electronics Technician eventually determined that most of the cameras in the SHU area were assigned to record to DVR 2. While the cameras assigned to DVR 2 were providing live video streams on August 9 and 10, 2019, no recordings from those cameras were available due to the DVR 2 hard drive issue, which the FBI later determined had occurred on July 29, 2019. Among the cameras whose video was not recorded was the camera at the end of L Tier, the SHU tier in which Epstein was housed.

⁵² The DVR system was located in a locked room, and access to the room was limited to the institution's SIS unit, staff assigned to inmate phone monitoring, and the Electronics Technicians.

Only two cameras in the vicinity of the SHU area were recording to DVR 1 at the time of Epstein's death.⁵³ One camera was located on the upper-level entrance to the 10 South Unit, a housing unit adjacent to the SHU, near the door MCC New York staff referred to as the "46 door." That camera captured video of a large part of the common area of the SHU, including the SHU Officers' Station and portions of the stairways leading to the different SHU tiers, including the tier containing Epstein's cell. Thus, anyone entering or attempting to enter the L Tier from the common area of the SHU on August 9 and 10 would have been picked up by the video recorded by that camera. Epstein's cell door, however, was not in that camera's field of view. The other camera that was recording was located in one of the ninth floor's two elevator bays and provided video of the ninth-floor fire exit and two of the floor's four elevators.

The available video showed that at approximately 7:49 p.m. on August 9, Epstein was escorted toward the L Tier stairway by an individual believed to be the Evening Watch SHU Officer in Charge.⁵⁴ At approximately 10:39 p.m., an unidentified CO appeared to walk up the L Tier stairway, and then reappeared within view of the camera at 10:41 p.m. This is believed to be the last time anyone entered L Tier before approximately 6:30 a.m. on August 10. Between approximately 10:40 p.m. on August 9 and just before 6:30 a.m. on August 10, the OIG did not observe on the recorded video any CO or other individual enter any of the SHU tiers, which is consistent with CO Tova Noel and Material Handler Michael Thomas's admissions to the OIG that the SHU rounds and counts were not conducted during that time frame. At approximately 6:28 a.m., an unidentified officer was observed on the L Tier stairway, presumably to deliver breakfast food trays. Between 6:28 a.m. and 6:32 a.m., an unidentified officer, believed to be Noel, moved back and forth several times between the L Tier stairway and the SHU Officers' Station. At approximately 6:33 a.m., additional officers entered the SHU and ascended the L Tier stairway, presumably after Noel activated her body alarm when Epstein was discovered hanged in his cell.

As noted above, the camera at the end of the L Tier was providing a live video feed at the time of Epstein's death but the video was not being recorded. The Electronics Technician told the OIG that certain MCC New York personnel, including the Control Center, SIS personnel, the Warden, most Lieutenants, and the Electronics Technician, had access to the live video feed of the institution's security cameras. He explained that to view the live feed of a particular camera an employee with access would need to key in the specific camera into the security camera system to call up the live feed. The Correctional Systems Officer, who was working in the Control Center on August 10 from 12 a.m. to 8 a.m., and the Morning Watch Operations Lieutenant both told the OIG that the only live feed from the SHU on their screens was video from the camera showing the SHU common area, and they did not perceive a need to take the necessary steps to see the live feed from the SHU L Tier from either of their duty stations on the evening Epstein died.

⁵³ One additional camera located at the 10 South Officers' Station was recording on August 10, 2019. That camera is not depicted in Figure 4.12 because neither the SHU nor the SHU entrances were within the field of view of that camera.

⁵⁴ The OIG found the video captured by the camera at the entrance to the 10 South Unit to be of low quality. Due to the video's low quality and the distance between the camera and the SHU common area, the OIG was able to observe movement of individuals within the SHU but was not always able to conclusively identify the individuals. The OIG was also not always able to determine the specific destinations of the individuals seen in the video given that the camera only captured partial views of the stairways to the various SHU tiers. The OIG found that movements captured on the video were generally consistent with employee actions described by multiple witnesses and certain actions documented in BOP records.

Figure 6.1

SHU Camera Locations and Recording Status on August 10, 2019



Source: DOJ OIG schematic drawing depicting the MCC New York SHU

Figure 6.2

Location of Recording SHU Camera at 10th Floor-South entrance



Note: The photograph has been modified for privacy reasons.

Source: DOJ OIG photograph and DOJ OIG schematic drawing depicting the MCC New York SHU

Figure 6.3

Field of View of the SHU Camera at 10th Floor-South Entrance



Source: DOJ OIG schematic drawing depicting the MCC New York SHU and the BOP

Figure 6.4

Partial View of L Tier Stairway, from the SHU Camera at 10th Floor-South Entrance



Source: DOJ OIG and the BOP

Figure 6.5

View of SHU Officers' Station from the SHU Camera at 10th Floor-South Entrance



Source: DOJ OIG and the BOP

Figure 6.6

Field of View of the Recording 9th Floor Elevator Bay Camera



Source: DOJ OIG schematic drawing depicting the MCC New York SHU and the BOP

Figure 6.7

Location of Non-Recording Camera in the L Tier of the SHU



Source: DOJ OIG schematic drawing depicting the MCC New York SHU and the Office of the Chief Medical Examiner, City of New York

The Warden, who was not scheduled to work on August 10, 2019, arrived at the institution later that morning after being notified of Epstein's death and was informed that most of the cameras in the SHU were not recording. He told the OIG that when the SIS Lieutenant arrived at the facility that morning, he informed her that the SHU cameras had not been recording, and the SIS Lieutenant explained that the hard drive issue had been detected on August 8. He told the OIG that prior to August 10, he was unaware that the DVR 2 issue had been detected on August 8, and that approximately half of the facility's cameras, and in particular the cameras in the SHU, were found to not be recording on that date.

The Electronics Technician told the OIG that the Warden had instructed Electronics Technician to try and recover any potential SHU video that may have been recorded by the cameras assigned to the malfunctioning DVR 2 system, but the Electronics Technician was unable to find anything. The Electronics Technician further said that the Warden wanted to have all the facility's cameras recording again as soon as possible, so he instructed the Electronics Technician to begin repairing DVR 2.

D. FBI Forensic Analysis of the DVR System

FBI evidence documents revealed that on August 10, 2019, the FBI seized all hard drives contained within the DVR 2 system. On August 14, 2019, the FBI returned to MCC New York and seized additional DVR 2 components. On August 15, 2019, the FBI seized the entire DVR 1 system.

The FBI's Digital Forensics Analysis Unit in Quantico, Virginia, received MCC New York's DVR system on August 16, 2019, and began to conduct a forensic analysis of the system. According to FBI forensic reports, DVR 2 did not start successfully. The Digital Forensics Analysis Unit found that the system contained three faulty hard drives. The FBI forensic reports state that the three drives were repaired by an FBI Advanced Data Recovery Specialist, but the DVR was never able to be assembled successfully. The forensic reports further state that an FBI computer scientist and the Company 1 Technician reviewed the DVR 2 controller logs and found that there had previously been "catastrophic disk failures" and no recordings would have been available after July 29, 2019.

When the OIG asked the Electronics Technician about this finding by the FBI, he told the OIG he was unaware that cameras were not recording to DVR 2 between July 29 and August 8, 2019. Neither the Warden nor the SIS Lieutenant was aware the cameras assigned to DVR 2 had not been recording since July 29, 2019. The Company 1 Technician could not recall working with the Electronics Technician on any DVR issues prior to August 8, 2019, but he said that if the entire DVR 2 server went down on July 29, 2019, no video would have been able to have been retrieved from that point forward from any of the cameras recording to DVR 2.

Chapter 7: Conclusions and Recommendations

I. Conclusions

Our investigation and review of the Federal Bureau of Prisons' (BOP) custody, care, and supervision of Jeffrey Epstein identified numerous and serious failures by employees of the Metropolitan Correctional Center located in New York, New York (MCC New York), including falsifying BOP records relating to inmate counts and rounds and multiple violations of MCC New York and BOP policies and procedures, which compromised Epstein's safety, the safety of other inmates, and the security of the institution. Specifically, we found that MCC New York staff failed to undertake required measures designed to make sure that, among other things, Epstein and other inmates were accounted for and safe, such as conducting inmate counts and 30-minute rounds, searching inmate cells, and ensuring adequate supervision of the Special Housing Unit (SHU) and the functionality of MCC New York's security camera system.

We further found that multiple BOP employees submitted false documents claiming that they had performed the required counts and rounds and that several MCC New York staff members lacked candor when questioned by the Office of the Inspector General (OIG) about their actions. Two MCC New York employees, Tova Noel and Michael Thomas, were charged criminally with falsifying BOP records relating to their conducting inmate counts and rounds. The U.S. Attorney's Office for the Southern District of New York subsequently entered into deferred prosecution agreements with Noel and Thomas and the court dismissed all charges against them after Noel and Thomas successfully fulfilled the terms of their agreements. Prosecution was declined by the U.S. Attorney's Office for the Southern District of New York for other MCC New York employees assigned to the SHU on August 9–10, 2019, who the OIG found also created, certified, and submitted false documentation regarding inmate counts and rounds on the day before and the day of Epstein's death.

The OIG also found that the MCC New York staff failed to carry out the Psychology Department's directive that Epstein be assigned a cellmate and that an MCC New York supervisor allowed Epstein to make an unmonitored telephone call the evening before his death.

The OIG determined that the combination of these and other failures led to Epstein being alone and unmonitored in his cell, with an excessive amount of bed linens, from approximately 10:40 p.m. on August 9, until he was discovered hanged in his cell at approximately 6:30 a.m. the following day. Additionally, the OIG found that staffing shortages, a persistent issue for the BOP, compromised the ability of MCC New York staff to adequately supervise inmates. As detailed below, we make a number of recommendations to the BOP to address the serious issues we identified during our investigation and review.

While the OIG determined that MCC New York staff committed significant violations of BOP and MCC New York policies and falsified records relating to their conducting inmate counts and rounds, the OIG did not uncover evidence that contradicted the Federal Bureau of Investigation's (FBI) determination regarding the absence of criminality in connection with how Epstein died. All MCC New York staff members who were interviewed by the OIG said they did not know of any information suggesting that Epstein's cause of death was something other than suicide. Likewise, none of the interviewed inmates provided any credible information that Epstein's cause of death was something other than suicide.

As detailed in Chapter 4 of this report, the SHU was a housing unit within MCC New York where inmates were securely separated from the general inmate population and kept locked in their cells for approximately 23 hours a day, to ensure their own safety as well as the safety of staff and other inmates. Access to the SHU was controlled by multiple locked doors. The primary entrance to the SHU (Main Exterior Entry Door) was opened remotely by a staff member in MCC New York's centralized Control Center. Additionally, there was a second locked door at the main entrance (Main Interior Entry Door), which could be opened only with a key held by a limited number of Correctional Officers (CO) while on duty.⁵⁵ Within the SHU, the entrance to each tier could be accessed only via a single locked door at the top or bottom of the staircase leading to the individual tier. Keys to open the locked tier doors were available only to a limited number of COs while on duty. Each tier had eight cells, each of which could house either one or two inmates. Each individual cell, which was made of cement and metal, could be accessed only through a single locked door, to which only a limited number of COs had keys while on duty. The SHU cell doors were made of solid metal with a small glass window and small locked slots that correctional staff used to handcuff inmates and provide food and toiletries to inmates. As a further security measure, during each shift a limited number of the COs had keys while on duty.

BOP policy and practice require that all SHU inmates be locked in their cells overnight. The OIG found no evidence indicating that the door to Epstein's cell or any other cell in the SHU tier in which Epstein was housed was unlocked on the evening of August 9–10, 2019, after SHU staff locked Epstein in his cell at approximately 8 p.m. SHU staff told the OIG that at approximately 8 p.m. on August 9, all SHU inmates were locked in their cells for the evening and that there was no indication that any of the other inmates could have gotten out of their cells. Epstein did not have a cellmate after Inmate 3 was transferred out of MCC New York on August 9, and therefore Epstein was alone in his cell the evening of August 9–10. The door to Epstein's cell was visible from the SHU Officers' Station, and CO Tova Noel and Material Handler Michael Thomas told the OIG that no one entered or exited Epstein's cell during their shift on August 10. Both of them further described delivering breakfast to the L Tier at about 6:30 a.m. on August 10, and how Noel unlocked the door to the L Tier, Thomas entered the L Tier and called for Epstein, and then Thomas unlocked his cell door when Epstein failed to respond. Additionally, the three inmates who were housed in the same SHU tier as Epstein on August 9 and 10, and who had a direct line of sight to the door of Epstein's cell from their cells, stated that no one entered or exited Epstein's cell after the SHU staff returned Epstein to his cell on the evening of August 9, which is consistent with the security measures in place within the MCC New York SHU.

Further, the OIG analyzed the available recorded video of the SHU, which was limited to the common area of the SHU, including the SHU Officers' Station, due to the MCC New York security camera system's video recording issues that we detailed in Chapter 6. The OIG's analysis of the recorded video did not identify any COs (other than those assigned to the SHU during that timeframe or had a specific reason for visiting the SHU) or other individuals present in the common area of the SHU approach any of the SHU tiers, including the L Tier where Epstein was housed, between approximately 10:40 p.m. on August 9 and approximately 6:30 a.m. on August 10. In sum, the OIG's investigation did not find any evidence that anyone was present in

⁵⁵ The primary entrance doors to the MCC New York SHU are shown in Figure 4.1. Access to the secondary entrance to the SHU, which was adjacent to the elevator bay on the south side of the floor, was also controlled by an exterior entry door opened by the Control Center and an interior door opened only with a key held by one of the COs assigned to the SHU while on duty. The secondary entrance doors to the SHU are shown in Figure 4.2.

the L Tier during that timeframe other than the inmates who were locked in their assigned cells on that tier of the SHU.

We also noted that the surveillance camera in the L Tier, as shown in the photograph in Figure 6.7, was in plain view of the inmates and therefore inmates would have been aware that any hallway movements, including into or out of Epstein's cell, were being live streamed and could be monitored, even if, unbeknownst to them, the Digital Video Recorder (DVR) system was not recording the live stream at that time. As the OIG has noted in numerous prior reports regarding the BOP's camera system, BOP staff and inmates are aware of where prison cameras are located and often engage in wrongdoing in locations where they know cameras are not located.⁵⁶ Additionally, the OIG did not observe on the recorded video of the SHU common area that Noel and Thomas, who were seated at the desk at the SHU Officers' Station immediately outside the L tier during that time period, at any time rose from their seats or approached the L Tier. We additionally found that Thomas's and Noel's reaction on the morning of August 10 upon finding Epstein hanging in his cell, as described to us by Thomas, Noel, the responding Lieutenant, and inmates, was consistent with their being unaware of any potential harm to Epstein prior to Thomas entering Epstein's cell at about 6:30 a.m. on August 10.

We further noted that Epstein had previously been placed on suicide watch and psychological observation due to the events of July 23, 2019; that numerous nooses made from prison bed sheets were found in his cell on the morning of August 10; and that he had signed a new Last Will and Testament on August 8, 2 days before he died. No weapons were recovered from Epstein's cell after his death. Additionally, the inmates who were interviewed consistently reported that on the evening Epstein died the SHU staff did not systematically conduct the required rounds and counts, which was one of the primary mechanisms for the SHU staff to ensure the safety and security of inmates housed in the SHU. As a result, Epstein was unmonitored and locked alone in his cell for hours with an excess amount of linens, which provided an opportunity for him to commit suicide.

Finally, the Medical Examiner who performed the autopsy detailed for the OIG why Epstein's injuries were more consistent with, and indicative of, a suicide by hanging rather than a homicide by strangulation. The Medical Examiner also told the OIG that the ligature furrow was too broad to have been caused by the electrical cord of the medical device in Epstein's cell and that blood toxicology tests revealed no medications or illegal substances were in Epstein's system. The Medical Examiner also noted the absence of debris under Epstein's fingernails, marks on his hands, contusions to his knuckles, or bruises on his body that would have indicated Epstein had been a struggle, which would be expected if Epstein's death had been a homicide by strangulation.

This is not the first time that the OIG has found significant job performance and management failures on the part of BOP personnel and widespread disregard of BOP policies that are designed to ensure that inmates are safe, secure, and in good health. For instance, the OIG's December 2022 investigation and review of the BOP's handling of the transfer of James "Whitey" Bulger identified serious job performance and

⁵⁶ U.S. Department of Justice (DOJ) OIG, [Notification of Needed Upgrades to the Federal Bureau of Prisons' Security Camera System](#), Management Advisory Memorandum 22-001 (October 2021); U.S. DOJ OIG, [Audit of the Federal Bureau of Prisons' Management and Oversight of its Chaplaincy Services Program](#), 21-091 (July 2021); U.S. DOJ OIG, [Review of the Federal Bureau of Prisons' Contraband Interdiction Efforts](#), Evaluation and Inspections Report 16-05 (June 2016).

management failures at multiple levels within the BOP.⁵⁷ Similar to the Bulger report, the numerous and serious transgressions that occurred in this matter came to light largely because they involved a high-profile inmate. The fact that serious deficiencies occurred in connection with high-profile inmates like Epstein and Bulger is especially concerning given that the BOP would presumably take particular care in handling the custody and care of such inmates.

Regrettably, the OIG has encountered similar issues on many other occasions. For example, the OIG has investigated numerous allegations related to the falsification of official BOP documentation concerning inmate counts and rounds, several of which have resulted in criminal prosecution. The OIG currently has two open investigations into allegations of falsified inmate count and round documentation, each involving an inmate death (by suicide and homicide) or escape from a BOP facility.

This investigation and review also revealed the direct impact of insufficient staffing levels on inmate safety. Witnesses repeatedly told the OIG that counts, rounds, cell searches, and other methods of inmate accountability were not undertaken because correctional staff were working multiple shifts—including one staff member who worked 24-hours straight—and were tired and overwhelmed with other duties. As discussed in greater detail in our recommendations, the OIG has repeatedly found the need for BOP to address staffing shortages. Most recently, in March 2023, the OIG found that the coronavirus disease 2019 (COVID-19) pandemic exacerbated the effects of preexisting BOP medical and nonmedical staffing shortages, an issue the OIG has identified as a concern for the BOP since at least 2015.⁵⁸

Further, the OIG has repeatedly found that BOP personnel have not consistently been attentive to the needs of inmates at risk for suicide. In this investigation, that inattention manifested in the failure of MCC New York staff and supervisors to ensure that Epstein was assigned a cellmate as required by the MCC New York Psychology Department directive issued after the July 23, 2019 incident in which Epstein was discovered in his cell with an orange cloth around his neck. In a March 2023 report, the OIG found that BOP psychology staff did not assess the suitability of single-cell assignments for five of the seven inmates who died by suicide while in COVID-19 quarantine units between March 2020 and April 2021.⁵⁹ The OIG's 2017 report on the BOP's use of restrictive housing for inmates with mental illness also noted that single-celling may present risks to inmate mental health, and both of the recommendations from that report regarding the use and oversight of single-celling remain open as of March 2023.⁶⁰

Lastly, as discussed in greater detail in the conclusions and recommendations that follow, the persistent deficiencies of the BOP's security camera systems are well documented and long-standing.

⁵⁷ U.S. DOJ OIG, [Investigation and Review of the Federal Bureau of Prisons' Handling of the Transfer of Inmate James "Whitey" Bulger](#), 23-007 (December 2022).

⁵⁸ U.S. DOJ OIG, *Capstone Review of the Federal Bureau of Prisons' Response to the Coronavirus Disease 2019 Pandemic*, Evaluation and Inspections Division A-2020-011 (March 2023) (*Capstone Report*).

⁵⁹ *Capstone Report*.

⁶⁰ U.S. DOJ OIG, [Review of the Federal Bureau of Prisons' Use of Restrictive Housing for Inmates with Mental Illness](#), Evaluation and Inspections Report 17-05 (July 2017).

The combination of negligence, misconduct, and outright job performance failures documented in this report all contributed to an environment in which arguably one of the most notorious inmates in BOP's custody was provided with the opportunity to take his own life, resulting in significant questions being asked about the circumstances of his death, how it could have been allowed to have happen, and most importantly, depriving his numerous victims, many of whom were underage girls at the time of the alleged crimes, of their ability to seek justice through the criminal justice process. The fact that these failures have been recurring ones at the BOP does not excuse them and gives additional urgency to the need for Department of Justice (DOJ) and BOP leadership to address the chronic staffing, surveillance, security, and related problems plaguing the BOP.

The OIG has completed its investigation and is providing this report to the BOP for appropriate action.

Unless otherwise noted, the OIG applies the preponderance of the evidence standard in determining whether DOJ personnel have committed misconduct. The U.S. Merit Systems Protection Board applies this same standard when reviewing a federal agency's decision to take adverse action against an employee based on such misconduct. See 5 U.S.C. § 7701(c)(1)(B) and 5 C.F.R. § 1201.56(b)(1)(ii).

A. MCC New York Staff Failed to Ensure that Epstein Had a Cellmate on August 9 as Instructed by the Psychology Department on July 30

On July 30, 2019, the MCC New York Psychology Department sent an email to over 70 BOP staff members stating that Epstein "needs to be housed with an appropriate cellmate." The Psychology Department's directive that Epstein have an appropriate cellmate arose out of the events that occurred on July 23, 2019, when Epstein was found lying on the floor of his cell with a piece of orange cloth around his neck. Epstein's cellmate at the time (Inmate 1) told MCC New York staff that Epstein had tried to hang himself, and another inmate housed on the same SHU tier at the time (Inmate 2) corroborated several aspects of Inmate 1's account. Epstein's accounts of what had occurred varied. Epstein initially told MCC New York staff that he thought his cellmate had tried to kill him, but thereafter he repeatedly said he did not know what had occurred. Epstein later asked two different MCC New York staff members if he could be housed with the same cellmate Epstein initially accused of having tried to harm him.

As a result of this incident, Epstein was placed on suicide watch and then psychological observation. Consistent with the Psychology Department's directive, the Captain and the SHU Lieutenant each told the OIG that they verbally informed SHU staff of Epstein's cellmate requirement. These and other witnesses said staff members regularly assigned to the SHU knew that Epstein needed to have a cellmate. However, despite the Psychology Department's widely disseminated July 30 email instruction and the subsequent verbal direction provided by the Captain and the SHU Lieutenant, Epstein was left without a cellmate on August 9 and, less than 24 hours later, Epstein died by suicide.

1. Failure to Make Required Notifications Regarding the Need to Assign Epstein a New Cellmate

The OIG's investigation and review revealed that on August 9, 2019, MCC New York staff assigned to the SHU failed to notify their superiors that Epstein's cellmate, Inmate 3, had been transferred out of MCC New York and therefore Epstein needed to be assigned a new cellmate. The failure to make these required notifications—and the supervisors' failure to properly supervise the SHU staff, discussed further below—

resulted in Epstein being housed without a cellmate at the time of his death, which was contrary to the Psychology Department's directive issued just 10 days earlier.

BOP standards of conduct require that employees "obey the orders of their superiors at all times."⁶¹ MCC New York Post Orders for the SHU require, among other things, that all SHU officers "maintain a log of pertinent information regarding inmate activity, detailing time, persons involved (if pertinent) and the event, which must be logged into TRUSCOPE."⁶² Importantly, the SHU Post Orders clarify that they "are not intended to describe in detail all the officer's responsibilities. Good judgment and common sense are expected in all situations not covered in these post orders."

On August 9, the Day Watch SHU Officer in Charge, the Evening Watch SHU Officer in Charge, and CO Tova Noel were each assigned to the MCC New York SHU as their permanent quarterly assigned post and served as the SHU Officer in Charge during their respective shifts.⁶³ The OIG investigation found that each of these employees knew that Epstein was required to have a cellmate at all times per the Psychology Department's directive.

The OIG further found that on August 9 the Day Watch SHU Officer in Charge, the Evening Watch SHU Officer in Charge, and Noel each became aware at various times during their respective shifts that Epstein's cellmate, Inmate 3, had been transferred from the institution with all of his belongings, a status known to all MCC New York staff members as meaning the inmate was being permanently transferred out of the institution. Specifically, the OIG investigation found that on the morning of August 9, the Day Watch SHU Officer in Charge and CO 1, who was also assigned to the SHU, reviewed the MCC New York daily call out list, a document that identifies all inmates who were leaving their housing units each day, which listed Inmate 3 as being scheduled to depart MCC New York with all of his belongings. At approximately 8:30 a.m., CO 1 escorted Inmate 3 from the SHU to Receiving and Discharge to be transferred out of the institution, and the Day Watch SHU Officer in Charge escorted Epstein from the SHU to the attorney conference room for his daily meeting with his attorneys.⁶⁴ During the escort, the Day Watch SHU Officer in Charge and CO 1 discussed the need to assign Epstein with a new cellmate due to Inmate 3's transfer.⁶⁵ The Day Watch SHU Officer in Charge told the OIG, and stated in a memorandum that he prepared following Epstein's death, that he notified his relief, the Evening Watch SHU Officer in Charge, of the need to assign Epstein a new cellmate, and that he likely notified an unspecified Lieutenant. However, the OIG did not credit the Day Watch SHU Officer in Charge's account because no other witnesses or evidence confirmed that he had in fact passed on information regarding Epstein's need for a new cellmate, either to a supervisor or his relief.

⁶¹ BOP Program Statement 3420.11.

⁶² TRUSCOPE is a BOP database that provides institution staff with detailed inmate and institution security-related information and provides unit officers an electronic event log.

⁶³ Noel served as the SHU Officer in Charge after the Evening Watch SHU Officer in Charge's shift ended at 10 p.m. on August 9, 2019.

⁶⁴ Receiving and Discharge is the area of MCC New York that is responsible for processing inmates who enter or leave the facility.

⁶⁵ The OIG did not find that CO 1 failed to make appropriate notifications because his immediate superior in his chain-of-command, the Day Watch SHU Officer in Charge, was aware of the need to assign Epstein a new cellmate.

The OIG investigation also found that during the next shift in the MCC New York SHU, both the Evening Watch SHU Officer in Charge and Noel became aware that Epstein was without a cellmate. The Evening Watch SHU Officer in Charge told the OIG that when he escorted Epstein back to his cell after Epstein's telephone call, he saw that Inmate 3 was not there and then he, Noel, and the Material Handler discussed the need for Epstein to have a new cellmate. The Evening Watch SHU Officer in Charge also told the OIG that he notified an unspecified supervisor. However, other witnesses did not corroborate his account. Noel told the OIG that she was unaware both that Epstein needed to have a cellmate and that Inmate 3 had been removed from the institution. Noel also told the OIG that she went to Epstein's cell at approximately 10 p.m.—a time of day when all inmates were secured in their cells—and may have plugged in Epstein's medical device for him. The OIG did not credit Noel's statements that she did not know that Epstein needed a cellmate or that Inmate 3 had been removed from the SHU based on contradictory witness statements (including her own) regarding SHU staff's knowledge of Epstein's cellmate requirement and Inmate 3's transfer out of the SHU.⁶⁶

The OIG investigation concluded that on August 9, 2019, the Day Watch SHU Officer in Charge, the Evening Watch SHU Officer in Charge, and Noel failed to notify a supervisor as required after Epstein's cellmate was permanently removed from the MCC New York SHU, which constituted a violation of BOP standards of conduct. Additionally, their inaction violated MCC New York SHU Post Orders because none of these individuals documented the fact the Epstein needed a new cellmate as required. Finally, all of these officers failed to exercise good judgment and common sense, as required by the SHU Post Orders, by not immediately undertaking steps through their chain-of-command to ensure that a high-profile inmate who had been released from suicide watch and psychological observation 10 days earlier had an appropriate cellmate.

2. Failure to Adequately Supervise SHU Staff

The OIG also found that MCC New York supervisory personnel failed to effectively perform their duties, which contributed to the fact that Epstein was housed without a cellmate at the time of his death. Rather than passively relying on a notification from subordinates, supervisory personnel also had an obligation under federal regulations to "put forth honest effort in the performance of their duties," which included supervision of SHU personnel.⁶⁷ The OIG's investigation revealed that the Captain and the Day Watch Operations Lieutenant, the Day Watch Activities Lieutenant, the Evening Watch Operations Lieutenant, and the Morning Watch Operations Lieutenant, among other MCC New York staff, received an email from the U.S. Marshals Service (USMS) on August 8, 2019, notifying them that Inmate 3 was scheduled to be transferred to another facility the following day. If any of these supervisors had read the email attachment, they would have known of the need to assign Epstein a new cellmate. Instead, many of these individuals told the OIG that they believed that Inmate 3 had gone to court on August 9 and they were unaware that he would not return and Epstein needed a new cellmate. The SHU Lieutenant's shift on August 8 ended over an hour before the USMS sent the email notification and he was not working on August 9. In his absence, the Day Watch Operations Lieutenant, the Day Watch Activities Lieutenant, the Evening Watch Operations Lieutenant, and the Morning Watch Operations Lieutenant had oversight of the SHU during their respective

⁶⁶ Noel reviewed a draft of the report and we considered her comments but made no changes as a result.

⁶⁷ 5 C.F.R. § 2635.101(b)(5); see also 5 C.F.R. § 2635.705(a).

shifts, and the Captain had oversight over all of the Lieutenants.⁶⁸ The OIG found that the failure of these individuals to adequately supervise SHU staff and ensure that a high-profile inmate who had recently been on suicide watch and psychological observation had an appropriate cellmate constituted a job performance failure.

3. Failure to Have a Contingency Plan for Assigning Epstein a Cellmate

Additionally, the OIG found that the Warden's failure to have a back-up cellmate assignment for Epstein constituted poor judgment. The Evening Watch SHU Officer in Charge told the OIG that although he knew that Epstein needed to be assigned another cellmate, SHU staff could not just put anyone in the cell with Epstein. The Warden confirmed this in his OIG interview, when he explained that he and BOP executive leadership selected Inmate 3 as Epstein's cellmate following the events of July 23, 2019. The Warden told the OIG that no inmates were pre-vetted to serve as Epstein's cellmate if Inmate 3 left MCC New York.⁶⁹ The Northeast Regional Director, the Warden, and the Captain all told the OIG that if Inmate 3 had been removed as Epstein's cellmate, they would have had to review a new list of potential cellmate candidates to ensure that Epstein was housed with an appropriate inmate. This selection process, which involved multiple steps undertaken by high-level BOP management, would be difficult to accomplish in a short period of time and ultimately may have impeded SHU officers' ability to house Epstein with a cellmate on August 9, 2019.

4. Lack of Candor

BOP policy requires that "[d]uring the course of an official investigation, employees are to cooperate fully by providing all pertinent information they may have. Full cooperation requires truthfully responding to questions."⁷⁰

As discussed above, the Day Watch SHU Officer in Charge and the Evening Watch SHU Officer in Charge told the OIG that they notified supervisory personnel regarding the need to assign Epstein a new cellmate. Based on a lack of corroborating evidence for these assertions, the OIG found that they lacked candor in their OIG interviews in violation of BOP policy. Similarly, the OIG found that Noel lacked candor in violation of BOP policy when she said she did not know that Epstein needed a cellmate or that his then-cellmate Inmate 3 had been transferred out of the SHU.

The OIG also found that the Morning Watch Operations Lieutenant lacked candor in her interview with the OIG in violation of BOP policy when she said she was not aware that Epstein was required to be housed with a cellmate. Her statement is contradicted by the fact that she was one of the MCC New York staff members who responded to the July 23, 2019 incident involving Epstein, which resulted in him being placed on suicide watch and psychological observation; she was a recipient of the Psychology Department's July 30, 2019

⁶⁸ The Senior Officer Specialist who served as the Acting Evening Watch Activities Lieutenant from 4 p.m. to 10 p.m. on August 9, 2019, told the OIG that she was not aware of Epstein's cellmate requirement. The OIG credited her account because she did not ordinarily work in or supervise the SHU and did not receive the Psychology Department's July 30, 2019 email regarding the need for Epstein to have an appropriate cellmate or the USMS August 8, 2019 email notifying that Inmate 3 would be transferred to another facility the following day.

⁶⁹ Upon reviewing a draft of this report, the Warden told the OIG that there were no suitable backup cellmates for Epstein.

⁷⁰ BOP Program Statement 3420.11.

email identifying the cellmate requirement; and the statements of multiple witnesses who told the OIG that Epstein's cellmate requirement was widely disseminated verbally by MCC New York leadership.

B. MCC New York Staff Failed to Conduct Mandatory Rounds and Inmate Counts Resulting in Epstein Being Unobserved for Hours Before His Death

The OIG's investigation and review revealed that on August 9 and 10, 2019, MCC New York SHU staff did not conduct the mandatory rounds and inmate counts during their shift in the SHU. The failure to undertake these required measures to account for inmate whereabouts and wellbeing—and the supervisors' failure to properly supervise the SHU staff, as discussed further below—resulted in Epstein being unobserved for hours before his death, which compounded the failure of MCC New York staff to ensure that Epstein had an appropriate cellmate.

1. Failure to Conduct Rounds and Inmate Counts in the SHU

Federal regulations require that employees "use official time in an honest effort to perform official duties."⁷¹ Additionally, BOP standards of conduct required that employees "[c]onduct themselves in a manner that fosters respect for the Bureau of Prisons, the Department of Justice, and the U.S. Government."⁷² Because "[i]nnattention to duty in a correctional environment can result in escapes, assaults, and other incidents," BOP standards of conduct also require employees "to remain fully alert and attentive during duty hours." BOP policy also requires "[c]ontinuous inmate accountability," which is accomplished through rounds and inmate counts.⁷³ Among other things, rounds and inmate counts enable staff to observe inmates and ensure that they are safe and secure in their cells and are in good health.

BOP policy and MCC New York SHU Post Orders set out the requirements for these inmate accountability measures, specifying that correctional staff must conduct rounds on an irregular schedule at least twice each hour, no more than 40 minutes apart. BOP policy and MCC New York SHU Post Orders further specify that at least two MCC New York SHU staff members must conduct inmate counts at 12 a.m., 3 a.m., 5 a.m., 4 p.m., and 10 p.m. daily, and also at 10 a.m. on weekends and federal holidays.

The OIG's investigation and review revealed that an inmate (Inmate 4) was internally transferred from the SHU to Receiving and Discharge at approximately 3:15 p.m. on August 9, 2019; however, this inmate transfer was not documented until approximately 12:35 a.m. on August 10, 2019. Based on this internal transfer, BOP records, and witness statements, the OIG determined that the 4 p.m. and 10 p.m. SHU inmate counts on August 9 were erroneous. In addition, the OIG reviewed the available SHU security camera video, which did not show COs walking up or down the stairs leading to the various SHU tiers during the count times, a process that is necessary to conduct an accurate count of inmates.⁷⁴ During their OIG interviews, the Evening Watch SHU Officer in Charge, the Material Handler, CO Tova Noel, and Material Handler Michael Thomas each admitted that they did not conduct all of the mandatory rounds and inmate counts in the SHU

⁷¹ 5 C.F.R. § 2635.705(a); see also 5 C.F.R. § 2635.101(b)(5).

⁷² BOP Program Statement 3420.11.

⁷³ BOP Program Statement 5500.14.

⁷⁴ As discussed in Chapter 5, the OIG found that the security camera video was of low quality. Therefore, the OIG analyzed the video in conjunction with BOP records and witness statements regarding the personnel in the SHU and their activities.

on the evening of August 9 and the morning of August 10. Noel told the OIG that she conducted the 10 p.m. count on August 9. The OIG did not credit her statement based on: (1) its review of the SHU security camera video, which reflects Noel walking up and down the stairs leading to some, but not all, of the tiers several minutes after the SHU inmate count had been called into the Control Center; (2) the 10 p.m. count slip, which erroneously included the SHU Inmate 4, who had been internally transferred to Receiving and Delivery; (3) other BOP records; and (4) the Material Handler's statement to the OIG that no one conducted the 10 p.m. count because everyone was tired.

Instead of performing the required duties to account for inmate whereabouts and wellbeing, the OIG found that officers assigned to the SHU on August 9 and 10, including the Material Handler, Noel, and Thomas primarily remained seated in the SHU Officers' Station—sometimes without moving for a period of time, suggesting that they were asleep—and conducted a variety of Internet searches on MCC New York computers. Thomas also admitted to the OIG that he "dozed off" for periods of time during his shift. The OIG's analysis of the SHU security camera video revealed that after approximately 10:40 p.m., no CO entered Epstein's tier in the SHU until just before 6:30 a.m. when Noel and Thomas began to serve breakfast to the inmates.

The OIG investigation and review concluded that the Evening Watch SHU Officer in Charge, the Material Handler, Noel, and Thomas failed to conduct the mandatory rounds and inmate counts during their respective shifts in the MCC New York SHU on August 9 and 10, 2019, and that their actions constituted violations of 5 C.F.R. §§ 2635.101(b)(5) and 2635.705(a), BOP Program Statements 3420.11 and 5500.14, and MCC New York SHU Post Orders.

2. False Statements and Lack of Candor

The OIG's investigation and review found that on August 9 and 10, 2019, the Evening Watch SHU Officer in Charge, the Material Handler, Noel, and Thomas made false statements when they falsified BOP records by attesting that they had completed the mandatory rounds and inmate counts when, in fact, they had not.

Federal law provides that "whoever, in any matter within the jurisdiction of the executive...branch of the Government of the United States, knowingly and willfully...makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry" has violated 18 U.S.C. § 1001(a)(3).

As discussed above, the OIG found that the Evening Watch SHU Officer in Charge, the Material Handler, Noel, and Thomas failed to conduct all of the mandatory rounds and inmate counts. As part of each institutional inmate count, BOP policy and MCC New York SHU Post Orders require two COs to conduct each count and memorialize the number of inmates in the SHU on an official MCC New York form, often called a count slip.⁷⁵ On the count slip, both COs are required to fill in the date and time the count had been performed, write the total number of inmates physically present in the unit counted, and then sign the count slip. Once the COs complete and sign the count slips, the count slips are then collected and delivered to the MCC New York Control Center. Officers assigned to the Control Center are responsible for comparing the count slips from each housing unit to the institution's overall inmate count sheet to ensure that each

⁷⁵ This BOP form is officially entitled "Metropolitan Correctional Center; New York, New York; Official Count Slip."

inmate was accounted for.⁷⁶ Only after all the count slips have been collected from each housing unit, and the numbers on the count slips had been matched to the institution's overall inmate count sheet, could the institutional count be deemed "cleared" or completed.

The Evening Watch SHU Officer in Charge, the Material Handler, Noel, and Thomas each prepared and/or signed a false count slip to create the impression that they had fulfilled their inmate accountability responsibilities when, in fact, they had not.⁷⁷ These individuals admitted to the OIG that instead of performing their assigned duties, they pre-filled the count slips with the number of inmates they believed were in the SHU based on what officers from the previous shift had told them and signed off on the documents knowing that they falsely attested to having completed the counts. Additionally, Noel admitted to the OIG that she had prefilled the official MCC New York forms documenting the times of the 30-minute rounds, often referred to as round sheets, and falsely attested to having completed the rounds.⁷⁸

Noel and Thomas were indicted by a grand jury for their false certifications of having conducted counts and rounds. Subsequently, each entered into a deferred prosecution agreement with the U.S. Attorney's Office for the Southern District of New York. The U.S. Attorney's Office of the Southern District of New York declined prosecution for the Evening Watch SHU Officer in Charge and the Material Handler.

The OIG investigation has found that the Evening Watch SHU Officer in Charge, the Material Handler, Noel, and Thomas knowingly and willingly falsified BOP records in violation of federal law by attesting that they had completed the mandatory rounds and inmate counts on the evening of August 9, 2019, and morning of August 10, 2019.

Additionally, as noted above, BOP policy requires employees to cooperate fully with an official investigation and truthfully respond to questions. The OIG found that Noel lacked candor when she told the OIG that she had conducted the 10 p.m. count when the weight of evidence indicates that, at most, she may have conducted a round at the time.

3. Poor Judgment Regarding the Use of Overtime

The OIG's investigation and review revealed that on August 9, 2019, MCC New York supervisory staff requested that a staff member fill an overtime position within the SHU, which resulted in that staff member working three shifts back-to-back, that is, 24 hours straight.

The collective bargaining agreement between the BOP and unions representing BOP employees provides that "[o]rdinarily, the minimum time off between shifts will be seven and one-half (7 ½) hours, and the

⁷⁶ The official name for the document used to record an institutional count is "Bureau of Prisons Count Sheet."

⁷⁷ The Evening Watch SHU Officer in Charge and Noel signed the 4 p.m. count slip; Noel and the Material Handler signed the 10 p.m. count slip; and Noel and Thomas signed the 12 a.m., 3 a.m., and 5 a.m. count slips.

⁷⁸ This BOP form is officially entitled "MCC New York, Special Housing Unit, 30 Minute Check Sheet."

minimum elapsed time of on 'days off' will be fifty-six (56) hours, except when the employee requests the change."⁷⁹

The Material Handler told the OIG that on August 9 he reported for a voluntary overtime shift from 12 a.m. to 8 a.m. and then worked his regular 8 a.m. to 4 p.m. shift in the warehouse. At some point during the day shift, the Day Watch Operations Lieutenant, a higher ranking official, called and asked the Material Handler if he could work overtime in the SHU and he agreed. The Material Handler told the OIG that he felt pressured to work the third shift, which resulted in him working 24 hours straight, from 12 a.m. on August 9 through 12 a.m. on August 10. As discussed previously, the Material Handler admitted to the OIG that on the evening of August 9, during his third shift which he worked in the SHU, he did not conduct the mandatory inmate counts and rounds because he was too tired.

The OIG investigation and review concluded that the Day Watch Operations Lieutenant exercised poor judgment when he requested that the Material Handler work a third consecutive shift. As the Day Watch Operations Lieutenant, he had access to the staff roster and schedule and therefore he should have known that the Material Handler had already worked 16 straight hours. Additionally, the Day Watch Operations Lieutenant's action was inconsistent with the collective bargaining agreement and did not reflect sound correctional judgment, as it would have been extremely difficult for the Material Handler to have effectively performed his duties during his third shift.

4. Clearing the 10 p.m. Institutional Count Knowing that It Was Inaccurate

The OIG's investigation and review determined that on August 9, 2019, MCC New York staff cleared the 10 p.m. institutional count knowing that the inmate counts from two housing units were inaccurate.

BOP policy and MCC New York SHU Post Orders require that COs conducting an institutional count relay the count verbally to the Control Center, which maintains the master count of all inmates.⁸⁰ If a count reported verbally does not match the master count, the Control Center must notify the Operations Lieutenant and the staff members must recount the inmates. MCC New York SHU Post Orders further provide that "[c]ount slips which appear to be altered will not be accepted."

As discussed previously, the OIG determined that an internal transfer of an inmate (Inmate 4) from the SHU to Receiving and Discharge on August 9 was not documented appropriately at the time of the transfer. The failure to document the transfer, along with the SHU staff not conducting the required inmate counts, resulted in the MCC New York Control Center receiving a count slip from the SHU with an incorrect number of inmates identified as being present within the SHU at the 10 p.m. institutional count.

During his OIG interview, Senior Officer Specialist 6, who was assigned to the Control Center, admitted that he amended the 10 p.m. count slips he received from the SHU and Receiving and Discharge in an attempt to reflect the correct number of inmates in the SHU following the internal inmate transfer that resulted in a SHU inmate (Inmate 4) being moved to Receiving and Discharge earlier in the day. Senior Officer Specialist 6 acknowledged that he should have requested a recount from the SHU, but instead he cleared the 10 p.m.

⁷⁹ BOP and Council of Prison Locals, Master Agreement, July 21, 2014–July 20, 2021 (extended until 2026).

⁸⁰ BOP Program Statement 5270.11.

count. Senior Officer Specialist 6 explained that the action he took was known as “ghost counting,” something he said he would not have done without authorization from the Operations Lieutenant or someone of a higher rank than himself. The Morning Watch Operations Lieutenant denied having authorized a “ghost count” and we found no evidence to corroborate Senior Officer Specialist 6’s claim that the Morning Watch Operations Lieutenant knew of and approved the false count.

The OIG found that Senior Officer Specialist 6 modified the count slips received from the SHU and Receiving and Discharge, failed to request a recount of the SHU inmates, and cleared the 10 p.m. institutional count knowing that it was inaccurate in violation of BOP policy and MCC New York SHU Post Orders.

5. Failure to Adequately Supervise SHU Staff and Conduct Lieutenant Rounds

The OIG also found that MCC New York supervisory personnel failed to effectively perform their duties, which contributed to the fact that Epstein was unobserved for many hours before his death. As discussed above, federal regulations require that MCC New York supervisory personnel “put forth honest effort in the performance of their duties,” which includes appropriate supervision of SHU personnel.⁸¹ Additionally, BOP policy requires that a Lieutenant visit the SHU during each shift to ensure that all procedures are being followed.⁸²

The OIG’s investigation revealed that the Evening Watch Operations Lieutenant and the Morning Watch Operations Lieutenant had oversight of the SHU during their respective shifts.⁸³ The Evening Watch Operations Lieutenant told the OIG that on August 9, 2019, he did not supervise the 4 p.m. count or conduct any rounds in the SHU. He acknowledged that he signed some of the pages of the 4 p.m. count, but he did not sign all of the pages as he should have. Beginning at 10 p.m. on August 9, the Morning Watch Operations Lieutenant was the sole supervisor overseeing the SHU. The Morning Watch Operations Lieutenant told the OIG that she noticed an error in the 12 a.m. count on August 10, which was due to SHU staff including Inmate 4, who had been internally transferred to Receiving and Discharge, among the inmates in the SHU. According to the Morning Watch Operations Lieutenant, the SHU staff should have conducted another count and submitted a new count slip, but she did not know if they actually did so.

During her shift, the Morning Watch Operations Lieutenant conducted one round in the SHU at approximately 4 a.m. on August 10. The OIG’s review of the available SHU security camera video revealed that the Morning Watch Operations Lieutenant was present in the SHU for approximately 7 minutes, during which time she conferred with Noel and Thomas, who were seated at and around the SHU Officers’ Station in the common area of the SHU. The Morning Watch Operations Lieutenant told the OIG that she was not required to visit each tier or go to each individual cell during a lieutenant round, but rather the purpose of the Lieutenant round was for her to speak with the officers on duty. This description of a Lieutenant round

⁸¹ 5 C.F.R. § 2635.101(b)(5); see also 5 C.F.R. § 2635.705(a).

⁸² BOP Program Statement 5270.11.

⁸³ The Acting Evening Watch Activities Lieutenant also had oversight over the SHU during her overtime shift (4 p.m. to 10 p.m. on August 9, 2019) in an acting capacity. The Evening Watch Operations Lieutenant and the Acting Evening Watch Activities Lieutenant told the OIG that the Acting Evening Watch Activities Lieutenant did not supervise any institutional counts, which was due to the start and end time of her overtime shift. The Acting Evening Watch Activities Lieutenant also told the OIG that she conducted one round in the SHU sometime between 5 p.m. to 8 p.m., during which time she walked down all of the tiers.

is inconsistent with the statements of many other supervisors and BOP Lieutenant training, all of which emphasized the need for Lieutenants to walk down all of the SHU tiers during a round. During their interviews with the OIG, the Northeast Regional Director, the Warden, Associate Warden 1, and the Captain clarified that they expected a Lieutenant conducting a round in the SHU to check in with the officers, walk down each of the tiers in the SHU, speak with inmates, and address inmate concerns. They explained that the Lieutenants did not act responsibly if they did not walk down each of the tiers to check on the inmates in the SHU. As the Acting Evening Watch Activities Lieutenant explained, unlike inmates in general population, SHU inmates cannot approach a supervisor because they are confined within a cell. Further, the BOP Lieutenant training, which the Morning Watch Operations Lieutenant attended in 2011, taught that Operations Lieutenants were required to visit the SHU at least once during each shift and that “[t]his visit will be substantially more than just entering the unit, signing the log book, and talking with staff.” Instead, Operations Lieutenants were trained to, among other things, walk through each range (or tier), inspect logs and reports, observe activities, and periodically observe counts within the SHU.

The OIG found that the failure of the Evening Watch Operations Lieutenant and the Morning Watch Operations Lieutenant to adequately supervise SHU staff, and of the Morning Watch Operations Lieutenant to adequately conduct a Lieutenant round in the SHU, which contributed to the SHU staff’s failure to conduct mandatory rounds and counts, constituted a job performance failure.

C. MCC New York Staff Allowed Epstein to Place an Unmonitored Telephone Call on August 9

The OIG’s investigation and review revealed that on the night before his death, Epstein placed an unrecorded, unmonitored telephone call using a non-Inmate Telephone System line from 6:58 p.m. to 7:19 p.m. Other than an MCC New York call log, no other BOP records exist regarding this unmonitored call, including the identity of the person Epstein called or a summary of the conversation.

Federal regulations require that the Warden of each BOP institution establish procedures to monitor inmate telephone conversations, which is “done to preserve the security and orderly management of the institution and to protect the public.”⁸⁴ For safety and security reasons, BOP policy requires that all inmate telephone calls be made through the Inmate Telephone System.⁸⁵ BOP policy recognizes that “on rare occasion, in times of crisis,” inmates may be permitted to make a telephone call outside of the Inmate Telephone System. In such circumstances, the telephone “must be placed in a secure area (e.g., a locked office), and “must be set to record telephone calls.” Additionally, the staff member coordinating the call must notify the BOP’s Special Investigative Services via email, providing the inmate’s name and register number, the date and time of the call, the number and name of the individual called, and the reason for the call. The Special Investigative Services must enter this information into the telephone recording system within 7 days.

The OIG’s investigation determined that on August 9, 2019, Epstein asked to call his mother. The Unit Manager told the OIG that after Epstein’s attorney visit had concluded, he agreed to allow Epstein to place a telephone call on an unrecorded legal line. The Unit Manager explained that it was his understanding that Epstein did not have the ability to place a telephone call through the Inmate Telephone System. The OIG’s

⁸⁴ 28 U.S.C. § 540.102.

⁸⁵ BOP Program Statement P5264.08.

investigation established both that Epstein's mother was deceased at the time he asked to telephone her and that Epstein had been assigned the necessary documentation that would have allowed him to place calls through the Inmate Telephone System, although he did not take the necessary steps to complete the setup process that would have given him the ability to place calls through that system. The Captain told the OIG that when the Unit Manager was escorting Epstein from his attorney visit back to the SHU and Epstein's requested call was discussed, he told the Unit Manager that Epstein's telephone call had to be monitored and logged.

The Unit Manager told the OIG that he escorted Epstein from his attorney visit to the shower area of the SHU, where he connected a telephone into an unrecorded legal line and dialed the phone number provided by Epstein. The Unit Manager said that when a male answered the call, he handed the telephone to Epstein, and then left MCC New York for the day because his shift had ended. Before leaving the SHU, the Unit Manager said he told the Evening Watch SHU Officer in Charge, the Material Handler, and Noel, who were at the SHU Officers' Station, to make sure Epstein got his 15 minutes on the telephone, but he did not instruct them to monitor the telephone call. The Unit Manager admitted that he did not verify the recipient of the telephone call, and that neither he nor anyone monitored or logged the telephone call as required.

The OIG found that the Unit Manager violated BOP policy by allowing Epstein to make an unrecorded and unmonitored telephone call, and by failing to verify the telephone call recipient, monitor, and log the call. We further found that the Unit Manager exercised poor judgment when he left MCC New York while Epstein was still on the telephone call that the Unit Manager had arranged and failed to instruct the Evening Watch SHU Officer in Charge, the Material Handler, or Noel to monitor the call.

D. MCC New York Staff Failed to Conduct and Document Cell Searches and Eliminate Safety Hazards in Epstein's Cell on August 9 Leaving Epstein with Excessive Linens in His Cell

The OIG's investigation and review determined that MCC New York staff assigned to the SHU on August 9, 2019, failed to conduct and document searches of Epstein's cell in the SHU. BOP policy requires that BOP staff routinely and irregularly search housing units.⁸⁶ MCC New York SHU Post Orders require that SHU staff conduct at least five cell searches each shift during daytime and evening hours (7:45 a.m. to 12 a.m.), in addition to other searches of SHU cells and common areas, and BOP policy and MCC New York SHU Post Orders require written documentation of cell searches. BOP policy explains that the purpose of cell searches is to, among other things, maintain sanitary conditions and eliminate safety hazards. To that end, MCC New York General Housing Unit Post Orders provide that when an inmate is transferred out of a facility, all of the inmate's linens should be taken to Receiving and Discharge.

The OIG reviewed MCC New York SHU TRUSCOPE entries for August 9, and identified only one cell search entered by MCC New York SHU staff for the entire day. During his interview with the OIG, the Day Watch SHU Officer in Charge stated that multiple cell searches were conducted in the MCC New York SHU on August 9; however, the Day Watch SHU Officer in Charge stated that he failed to document the cell searches within the TRUSCOPE system as required because he was too busy with other duties. The Day Watch SHU Officer in Charge further stated that any of the SHU staff could have logged the cell searches into

⁸⁶ BOP Program Statement 5521.06.

TRUSCOPE, but that it was primarily the SHU Officer in Charge's responsibility to do so. The Evening Watch SHU Officer in Charge told the OIG that he and other staff members did not conduct any cell searches during his shift in the SHU on August 9. Additionally, the OIG determined that there was an excessive amount of bed linen within Epstein's cell. The Captain reviewed photographs of Epstein's cell and told the OIG that the excessive linens were a security issue because they could give inmates materials to fashion an improvised noose or use as escape paraphernalia.

The OIG found that on August 9, 2019, the Day Watch SHU Officer in Charge either failed to conduct the required cell searches or failed to document the cell searches that he conducted in the SHU, and that the Evening Watch SHU Officer in Charge failed to ensure that MCC New York staff assigned to the SHU conducted cell searches and himself failed to log cell searches in violation of BOP policy and MCC New York SHU Post Orders. Additionally, the OIG found that it was a performance failure for the Day Watch SHU Officer in Charge, the Evening Watch SHU Officer in Charge, and Noel, who served as the SHU Officer in Charge during their respective shifts on August 9 and 10, 2019, to have permitted Epstein to have an excessive amount of linens in his cell.

E. MCC New York Staff Failed to Ensure that the Institution's Security Camera System was Fully Functional Resulting in Limited Recorded Video Evidence

This investigation and review revealed longstanding deficiencies with MCC New York's security camera system. These deficiencies resulted in nearly all of the cameras in and around the SHU where Epstein was being housed to not record video starting in late July 2019 and continuing through the date of Epstein's death on August 10, 2019. According to forensic analysis conducted by the FBI after Epstein's death, on July 29, 2019, a disk failure in MCC New York's DVR 2 system caused approximately half of the institution's cameras—including nearly all of the cameras in and around the SHU—to display only a live video feed with no video recording. MCC New York personnel did not learn of this system failure until 11 days later on August 8, 2019. MCC New York personnel determined that the DVR 2 system needed to be rebuilt to restore recording functionality. Despite the lack of recording functionality, this repair was not completed until after Epstein's death.

The Warden told the OIG that he was generally aware that there were problems with the camera system. The Warden sought and received approval from BOP to replace the entire camera system and in September 2018, BOP entered into contracts totaling over \$730,000 to purchase new equipment for the camera replacement project. Although MCC New York management procured new DVR components approximately 9 months prior to Epstein's death, the new system was not installed in a timely manner. The new cameras required new conduit and wiring to be installed before the camera installation. Management faced staffing shortages, temporary rotating facility managers, and other competing priorities that did not allow for completion of the installation of the wiring or the new camera system. The OIG determined that as of August 2021—nearly 3 years after MCC New York contracted for replacement camera equipment—the system upgrade still had not been completed.⁸⁷

⁸⁷ The BOP temporarily closed MCC New York in October 2021 due to substandard conditions that are unrelated to this investigation and review.

MCC New York's failure to ensure that its security camera system was fully functional and make timely repairs is consistent with the OIG's previous observations regarding weaknesses in the BOP's overall system of security cameras. Dating back to at least 2013, the OIG has repeatedly observed inadequacies in the BOP's overall system of security cameras, including inoperable cameras, an insufficient number of cameras, poor video quality, and inadequate video storage. In a 2016 report on the BOP's contraband interdiction efforts, the OIG identified specific deficiencies with the camera system, and recommended that the BOP evaluate the system to determine needed upgrades.⁸⁸ In response to the 2016 recommendation, the BOP assessed the camera systems at each institution over the next several years and determined that 45 of its 122 institutions, including MCC New York, required camera system upgrades. The BOP worked to upgrade the systems at those 45 institutions between 2019 and 2021. In June 2021, the BOP reported that it had updated all cameras at the 45 institutions with the latest software and equipment, and that it had installed additional cameras to bolster surveillance. However, as reported in an October 2021 Management Advisory Memorandum issued to the BOP, the OIG analyzed the reported upgrades at the 45 institutions and found that the BOP had addressed some but not all of the deficiencies described in the 2016 OIG report. In its 2021 Management Advisory Memorandum, the OIG recommended that the BOP develop a comprehensive strategic plan for transitioning to a fully digital security camera system. The BOP has provided the OIG with a strategic plan that includes estimated cost projections and timelines for addressing the camera system concerns and completing the system upgrades.⁸⁹ As of 2023, the OIG's 2021 recommendation remains open.

The BOP's failure to address the issue of functional security camera systems across the agency and at individual institutions presents an ongoing risk to the safety of BOP staff and inmates and has the potential to impair the investigation of and accountability for staff and inmate misconduct. It is imperative that the BOP prioritize the expeditious expansion and modernization of its security camera system to mitigate security risks.

II. Recommendations

The OIG investigation identified multiple shortcomings in BOP policies that should be further assessed to ensure the BOP can more effectively handle issues that arise in connection with the custody and care of inmates. The recommendations address issues related to and the custody and care of inmates at risk for suicide; measures designed to increase safety, such as staff rounds, inmate counts, and cell searches; and institutional security camera systems and staffing shortages, two longstanding issues for the BOP.

- 1. The BOP should implement a process for assigning a cellmate following suicide watch or psychological observation, with criteria for exceptions based on the particular individual or security considerations.**

According to the MCC New York Institution Supplement policy to the Suicide Prevention Program Policy Statement 5324.08, inmates discharged from suicide watch will be assigned a cellmate. The supplemental

⁸⁸ U.S. DOJ OIG, [Review of the Federal Bureau of Prisons' Contraband Interdiction Efforts](#), Evaluation and Inspections Report 16-05 (June 2016).

⁸⁹ U.S. DOJ OIG, [Notification of Needed Upgrades to the Federal Bureau of Prisons' Security Camera System](#), Management Advisory Memorandum 22-001 (October 2021).

policy does not, however, describe how long the cellmate requirement should last or if any staff must approve the removal of the cellmate requirement. The Suicide Prevention Program Policy Statement 5324.08 does not describe any process or procedure that requires cellmate assignments for inmates coming off of suicide watch. The Warden stated there was no BOP policy mandating that an inmate coming off of suicide watch have a cellmate, but that doing so was "sound correctional judgment."

The OIG's investigation and review revealed that there were knowledge gaps among MCC New York staff regarding Epstein's cellmate requirement, indicating that improved communication with institutional staff would be beneficial. The OIG therefore recommends that the BOP implement a requirement that all inmates coming off of suicide watch or psychological observation to be assigned cellmates with criteria for exceptions based on the particular individual or security considerations, provide guidance for determining when a cellmate is no longer required, and implement a process for approving, documenting, and communicating to institutional staff the assignment and removal of cellmates for these inmates.

- 2. The BOP should establish procedures to ensure inmates at high risk for suicide and for whom a cellmate is recommended will continue to have a cellmate until the recommendation is changed or rescinded, including establishing a contingency plan for cellmate re-assignment, with criteria for exceptions based on the particular individual or security considerations.**

The OIG's investigation and review found that there was no contingency plan in place to assign Epstein a new cellmate when his then-cellmate was transferred out of MCC New York. Although the failure to assign a new cellmate was due, in part, to SHU staff failing to make required notifications and supervisory staff failing to adequately supervise SHU staff, the gap in cellmate assignment was also due to the lack of a contingency plan. The Evening Watch SHU Officer in Charge told the OIG that although he knew that Epstein needed a new cellmate, he said that SHU staff did not have the authority to assign a new cellmate, which was consistent with what MCC New York supervisory personnel told the OIG. A contingency plan, such as a list of alternate cellmates, would have increased the likelihood that Epstein would not have been housed alone at the time of his death. The OIG therefore recommends that the BOP develop contingency plans for cellmate assignment for high-risk inmates with criteria for exceptions based on the particular individual or security considerations.

- 3. The BOP should evaluate its current process for obtaining and documenting approval for social or legal visits while an inmate is on suicide watch or psychological observation, which allows for institution-specific variations in the process, and provide guidance on standard components that each institution should include in its process to mitigate security issues that can arise when an inmate is on suicide watch or psychological observation.**

According to the BOP's Suicide Prevention Program Policy Statement 5324.08 and the MCC New York Institution Supplement to the suicide prevention policy, inmates on suicide watch must be under constant observation by staff or trained inmate observers. The MCC New York Institution Supplement policy states that only with rare exceptions that are approved by the Captain as well by the Associate Warden of Programs will visitation either social or legal be permitted for inmates on suicide watch. Additionally, the

MCC New York Procedural Memorandum for Psychological Observation states that inmates on psychological observation will be continuously monitored by either an inmate companion or a staff member.

A review of the Suicide Watch Chronological Logs for July 23, 2019, revealed Epstein was allowed to leave the suicide watch room to visit with his attorneys for more than 6 hours. According to the Psychological Reconstruction conducted by the Assistant Director of the Reentry Services Division, during Epstein's psychological observation on July 24 through July 30, 2019, Epstein was also allowed to visit with his attorneys between 8–11 hours each day without direct observation. Although the MCC New York supplemental policy described an approval process for social and legal visits while an inmate is on suicide watch or psychological observation, the OIG found no evidence that Epstein's legal visits were approved by the Captain or an Associate Warden. Additionally, the BOP Suicide Prevention Program Policy Statement 5324.08 does not describe any process or procedures that allows an inmate to have legal or social visits while on suicide watch or psychological observation. The OIG therefore recommends that the BOP evaluate its current process for such visits to be approved and documented.

4. The BOP should evaluate its methods of accounting for inmate whereabouts and wellbeing and make changes as may be appropriate to improve those methods through policy, training, or other measures.

The OIG's investigation and review revealed many inmate accountability deficiencies. Most fundamentally, MCC New York staff assigned to the SHU on August 9 and 10, 2019, did not conduct many of the required rounds and inmate counts. Additionally, there was lacking or delayed documentation regarding inmates, including cell assignments and internal inmate transfers. Internal reports, such as the daily call out list and the Lieutenant log, are either not retained or subject to continuous modification, which reduces their utility as accountability tools. Therefore, the OIG recommends that the BOP evaluate its methods of accounting for inmate whereabouts and wellbeing and make changes as appropriate to improve those methods through policy, training, or other measures.

5. BOP policy should clarify what is required of a Lieutenant when conducting a round.

The OIG's investigation and review revealed significant gaps in the supervision of MCC New York staff assigned to the SHU. Although BOP policy requires MCC New York Lieutenants to conduct at least one round in the SHU during each shift, what was required of a Lieutenant during the round is not specified. During their interviews with the OIG, experienced MCC New York supervisory personnel described what should be done during a round, which is also reflected in BOP Lieutenant training, but this expectation was not memorialized in any BOP or MCC New York policy or Post Order. The OIG recommends that the BOP develop a policy, either at an agency-wide or institution-specific level, to define what is expected of supervisory personnel during a round in the SHU to better ensure that BOP staff are appropriately supervised.

6. The BOP should continue to develop and implement plans to address staffing shortages at its prisons.

Since at least 2015, the OIG has repeatedly found the need for BOP to address staffing shortages, including medical staffing shortages.⁹⁰ This investigation and review revealed the direct impact of staffing deficiencies on inmate safety. For example, the Material Handler worked three consecutive shifts—24 hours straight—on August 9, 2019, which was certainly a contributory cause to the lack of adequate means of accounting for inmate location and wellbeing in the SHU. The Material Handler told the OIG that no one did the 10 p.m. SHU inmate count because they were tired. Additionally, the OIG's investigation and review found that in connection with MCC New York's upgrade of its security camera system, the BOP's Northeast Regional Office arranged for technicians from other BOP institutions to perform temporary duty (TDY) assignments to MCC New York to perform necessary mechanical, electrical, plumbing, and wiring work. Yet, during the course of the TDY rotations, work was not consistently conducted on the camera upgrade because sometimes TDY staff were used to cover shortages at MCC New York's custody posts. Without adequate staffing, the BOP cannot fulfill its mandate to ensure safe and secure correctional facilities. The OIG therefore recommends that the BOP continue to develop and implement plans to address staffing shortages at its institutions.

7. The BOP should evaluate its cell search procedures and make changes as may be appropriate to improve those procedures through policy, training, or other measures.

The OIG's investigation and review found that there was an excessive amount of linens in Epstein's cell at the time of his death. BOP policy and MCC New York SHU Post Orders require that SHU cells be searched, but they do not specifically address the issue of excessive bed linens, which the Captain told the OIG present a safety hazard because an inmate can use them to harm themselves or escape from the institution. Therefore, the OIG recommends that the BOP evaluate its cell search procedures and make changes as may be appropriate to improve those procedures through policy, training, or other measures.

⁹⁰ U.S. DOJ OIG, [Analysis of the Federal Bureau of Prisons' Fiscal Year 2019 Overtime Hours and Costs](#), Management Advisory Memorandum 21-011 (December 2020); U.S. DOJ OIG, [Review of the Federal Bureau of Prisons' Use of Restrictive Housing for Inmates with Mental Illness](#), Evaluation and Inspections Division Report 17-05 (July 2017); U.S. DOJ OIG, [Audit of the Federal Bureau of Prisons' Contract No. DJBP0616BPA12004 Awarded to Spectrum Services, Inc., Victorville, California](#), Audit Division Report 17-20 (March 2017); U.S. DOJ OIG, [Audit of the Federal Bureau of Prisons' Contract with CoreCivic, Inc. to Operate the Adams County Correctional Center in Natchez, Mississippi](#), Audit Division Report 17-08 (December 2016); U.S. DOJ OIG, [Review of the Federal Bureau of Prisons' Medical Staffing Challenges](#), Evaluation and Inspections Division Report 16-02 (March 2016); U.S. DOJ OIG, [Review of the Impact of an Aging Inmate Population on the Federal Bureau of Prisons](#), Evaluation and Inspections Division Report 15-05 (May 2015). Additionally, multiple remote inspections the OIG conducted as part of its pandemic response oversight work revealed that staffing shortages impacted the BOP's ability to respond to inmates' medical needs during the Coronavirus Disease 2019 pandemic. These findings are summarized in the OIG's Capstone report.

8. **The BOP should enhance existing policies regarding institutional security camera systems to ensure they specifically state that such systems must have the capacity to record video and that BOP institutions must conduct regular security camera system functionality checks.**

As discussed in the Conclusions section of this chapter, the OIG found that, even though the highest levels of leadership knew of the MCC New York security camera system's recurring deficiencies, prior to Epstein's death, no one was tasked with the responsibility of checking the security camera system on a routine basis to ensure that the system was functional. As a result, when on July 29, 2019, video from approximately half of the institution's security cameras was no longer being recorded, the problem went undetected for 11 days. The OIG also found that there are no BOP policies that specifically state that security camera systems must have the capacity to record or that institutional staff must perform periodic checks to ensure the camera system is fully functional. Cameras that are failing to provide good quality or any live video streams put the safety of BOP staff members and inmates at risk, and the lack of video recordings can potentially hinder investigations of wrongdoing by staff and inmates. The OIG therefore recommends that the BOP enhance existing policies and protocols so they specifically state that all institutional security camera systems must have the capacity to record, and that specified staff at each institution must conduct periodic checks of the security camera system to determine its operational status and take corrective action as soon as possible when the system is found to be inoperable. Such routine checks would help ensure that camera system malfunctions are detected and corrective actions are initiated in a timely manner.

Appendix A: The BOP's Response to the Draft Report



U. S. Department of Justice

Federal Bureau of Prisons

Central Office

Office of the Director

Washington, DC 20534

June 22, 2023

MEMORANDUM FOR

ASSISTANT INSPECTOR GENERAL
INVESTIGATIONS DIVISION

FROM:

SUBJECT:

Response to the Office of Inspector General's (OIG) Draft Report:
Investigation and Review of the Federal Bureau of Prisons' Custody, Care,
and Supervision of Jeffrey Epstein at the Metropolitan Correctional Center
in New York, New York

The Bureau of Prisons (BOP) appreciates the opportunity to formally respond to the Office of the Inspector General's (OIG) above-referenced draft report. BOP values OIG's careful review of the facts and circumstances surrounding the death of Jeffrey Epstein and concurs with the recommendations resulting from this engagement. The lessons learned during the course of this engagement will be applied to the broader BOP correctional landscape.

The facts and circumstances related to those few BOP employees at MCC New York in this report reflect a failure to follow BOP's longstanding policies, regulations, and/or laws. While this misconduct described in this report is troubling, those who took part in it represent a very small percentage of the approximately 35,000 employees across more than 120 institutions who continue to strive for correctional excellence every day.

In the Report, OIG makes recommendations to enhance BOP policies and practices and improve accountability. In response to this and previous OIG and Government Accountability Office (GAO) engagements, BOP has already begun to evaluate nationwide trends and strengthen employee accountability.

In April of this year, BOP's leadership announced its new mission as "corrections professionals who foster a humane and secure environment and ensure public safety by preparing individuals for successful reentry into our communities." BOP's new core values include accountability, integrity, respect, compassion, and correctional excellence. Of note, our core value of accountability requires BOP employees to be responsible and transparent to the public, ourselves, and to those in our care and custody by the standards we establish, the actions we take, and the duties we perform. As reflected in our mission and core values, BOP is committed to providing a safe environment for both employees and adults in our custody.

Recommendation One: The BOP should implement a process for assigning a cellmate following suicide watch or psychological observation, with criteria for exceptions based on the particular individual or security considerations.

BOP's Response: The BOP recognizes the importance of careful monitoring of adults in custody who face mental health challenges and therefore concurs with this recommendation. Our practice is to carefully consider both the well-being and safety of the individual involved and overarching safety and security concerns. In the years since Mr. Epstein's death, the BOP has updated its process related to suicide watch and psychological observation. Under BOP's revised process, upon removal from suicide watch or psychological observation, psychologists make individualized care recommendations about clinical follow-up and other custodial concerns, including housing and cellmates. Mental health, custody, and unit team employees work collaboratively to ensure that each individual removed from suicide watch is housed appropriately.

Recommendation Two: The BOP should establish procedures to ensure inmates at high risk for suicide and for whom a cellmate is recommended will continue to have a cellmate until the recommendation is changed or rescinded, including establishing a contingency plan for cellmate re-assignment, with criteria for exceptions based on the particular individual or security considerations.

BOP's Response: The BOP concurs with this recommendation. As described in its response to Recommendation 1, BOP's current process related to suicide watch and psychological observation applies an individualized approach to the care and custody of adults in custody. Upon removal from suicide watch or psychological observation, individualized care recommendations are made by psychologists, custody, and unit team for each individual. BOP thoroughly evaluates each celling assignment on an individual basis for persons deemed to be at moderate to high risk for suicide.

Recommendation Three: The BOP should evaluate its current process for obtaining and documenting approval for social or legal visits while an inmate is on suicide watch or psychological observation, which allows for institution-specific variations in the process, and provide guidance on standard components that each institution should include in its process to mitigate security issues that can arise when an inmate is on suicide watch or psychological observation.

BOP's Response: The BOP concurs with this recommendation.

Recommendation Four: The BOP should evaluate its methods of accounting for inmate whereabouts and wellbeing and make changes as may be appropriate to improve those methods through policy, training, or other measures.

BOP's Response: The BOP concurs with this recommendation.

Recommendation Five: BOP policy should clarify what is required of a lieutenant when conducting a round.

BOP's Response: The BOP concurs with this recommendation.

Recommendation Six: The BOP should continue to develop and implement plans to address staffing shortages at its prisons.

BOP's Response: The BOP concurs with this recommendation. Hiring and retaining qualified personnel is a key priority and BOP has developed and implemented a multi-pronged approach that involves enhanced recruitment efforts and appropriate incentives. While the issues raised in the OIG's report were the result of employees failing to adhere to their duties, as opposed to a staffing shortage, the BOP welcomes the opportunity to continue the significant work that has already been undertaken and that is ongoing regarding staffing.

Recommendation Seven: The BOP should evaluate its cell search procedures and make changes as may be appropriate to improve those procedures through policy, training, or other measures.

BOP's Response: The BOP concurs with this recommendation.

Recommendation Eight: The BOP should enhance existing policies regarding institutional security camera systems to ensure they specifically state that such systems must have the capacity to record video and that BOP institutions must conduct regular security camera system functionality checks.

BOP's Response: The BOP concurs with this recommendation.

The BOP appreciates OIG's careful attention to this engagement, and its willingness to provide specific, feasible recommendations that address the root causes of issues raised in the incident described. Thank you for the opportunity to comment on this report. We look forward to working with OIG to close these recommendations.

Appendix B: OIG Analysis of the BOP's Response

The Office of the Inspector General (OIG) provided a draft of this report to the Federal Bureau of Prisons (BOP), and the BOP's response is incorporated as Appendix A. The BOP indicated in its response that it agreed with all eight recommendations.

The following provides the OIG's analysis of the BOP's response and a summary of the actions necessary to close the recommendations. The OIG requests that the BOP provide an update on the status of its response to the recommendations within 90 days of the issuance of this report.

Recommendation 1: The BOP should implement a process for assigning a cellmate following suicide watch or psychological observation, with criteria for exceptions based on the particular individual or security considerations.

Status: Resolved.

BOP Response: The BOP reported the following:

The BOP recognizes the importance of careful monitoring of adults in custody who face mental health challenges and therefore concurs with this recommendation. Our practice is to carefully consider both the well-being and safety of the individual involved and overarching safety and security concerns. In the years since Mr. Epstein's death, the BOP has updated its process related to suicide watch and psychological observation. Under BOP's revised process, upon removal from suicide watch or psychological observation, psychologists make individualized care recommendations about clinical follow-up and other custodial concerns, including housing and cellmates. Mental health, custody, and unit team employees work collaboratively to ensure that each individual removed from suicide watch is housed appropriately.

OIG Analysis: The BOP's response is responsive to this recommendation. The OIG will consider whether to close this recommendation after the BOP (1) provides for the OIG's review a proposed process for assigning a cellmate following suicide watch or psychological observation, with criteria for exceptions based on the particular individual or security considerations, that addresses issues identified in the OIG's report; and (2) implements the process.

Recommendation 2: The BOP should establish procedures to ensure inmates at high risk for suicide and for whom a cellmate is recommended will continue to have a cellmate until the recommendation is changed or rescinded, including establishing a contingency plan for cellmate re-assignment, with criteria for exceptions based on the particular individual or security considerations.

Status: Resolved.

BOP Response: The BOP reported the following:

The BOP concurs with this recommendation. As described in its response to Recommendation 1. BOP's current process related to suicide watch and psychological observation applies an

individualized approach to the care and custody of adults in custody. Upon removal from suicide watch or psychological observation, individualized care recommendations are made by psychologists, custody, and unit team for each individual. BOP thoroughly evaluates each celling assignment on an individual basis for persons deemed to be at moderate to high risk for suicide.

OIG Analysis: The BOP's response is not fully responsive to this recommendation. Recommendation 1 focuses on the process for assigning a cellmate following suicide watch and psychological observation. Recommendation 2, on the other hand, focuses on procedures to ensure that inmates at high risk for suicide and for whom a cellmate is recommended continue to have a cellmate until the recommendation is changed or rescinded. Our investigation and review determined that BOP employees did not take steps to ensure that Jeffrey Epstein continuously had a cellmate in response to Psychology Department personnel having determined that he needed to have an appropriate cellmate, and absent any indication that security or other considerations relating to Epstein warranted his not having a cellmate.

The OIG will consider whether to close this recommendation after the BOP (1) develops the recommended procedures; (2) provides the procedures to the OIG; and (3) implements the procedures.

Recommendation 3: The BOP should evaluate its current process for obtaining and documenting approval for social or legal visits while an inmate is on suicide watch or psychological observation, which allows for institution-specific variations in the process, and provide guidance on standard components that each institution should include in its process to mitigate security issues that can arise when an inmate is on suicide watch or psychological observation.

Status: Resolved.

BOP Response: The BOP reported the following:

The BOP concurs with this recommendation.

OIG Analysis: The BOP concurred with this recommendation but did not provide any additional information. The OIG will consider whether to close this recommendation after the BOP (1) evaluates the current process for obtaining and documenting approval for social or legal visits while an inmate is on suicide watch or psychological observation; (2) provides guidance on standard components that each institution should include in its process; and (3) provides to the OIG documentation of the evaluation and the guidance forwarded to institutions for inclusion in their institution-specific processes.

Recommendation 4: The BOP should evaluate its methods of accounting for inmate whereabouts and wellbeing and make changes as may be appropriate to improve those methods through policy, training, or other measures.

Status: Resolved.

BOP Response: The BOP reported the following:

The BOP concurs with this recommendation.

OIG Analysis: The BOP concurred with this recommendation but did not provide any additional information. The OIG will consider whether to close this recommendation after the BOP (1) evaluates its methods of accounting for inmate whereabouts and wellbeing; (2) makes any appropriate changes to improve those methods through policy, training, or other measures; and (3) provides documentation of evaluation and any appropriate changes to the OIG.

Recommendation 5: BOP policy should clarify what is required of a Lieutenant when conducting a round.

Status: Resolved.

BOP Response: The BOP reported the following:

The BOP concurs with this recommendation.

OIG Analysis: The BOP concurred with this recommendation but did not provide any additional information. The OIG will consider whether to close this recommendation after the BOP (1) updates its policy to clarify what is required of a Lieutenant when conducting a round; (2) communicates the policy update to all relevant BOP employees; and (3) provides documentation of the policy update and communication to the OIG.

Recommendation 6: The BOP should continue to develop and implement plans to address staffing shortages at its prisons.

Status: Resolved.

BOP Response: The BOP reported the following:

The BOP concurs with this recommendation. Hiring and retaining qualified personnel is a key priority and BOP has developed and implemented a multi-pronged approach that involves enhanced recruitment efforts and appropriate incentives. While the issues raised in the OIG's report were the result of employees failing to adhere to their duties, as opposed to a staffing shortage, the BOP welcomes the opportunity to continue the significant work that has already been undertaken and that is ongoing regarding staffing.

OIG Analysis: The BOP's response is responsive to the recommendation. The OIG will consider whether to close this recommendation after the BOP (1) develops and implements plans to address staffing shortages at its prisons and (2) provides documentation of such efforts to the OIG.

Recommendation 7: The BOP should evaluate its cell search procedures and make changes as may be appropriate to improve those procedures through policy, training, or other measures.

Status: Resolved.

BOP Response: The BOP reported the following:

The BOP concurs with this recommendation.

OIG Analysis: The BOP concurred with this recommendation but did not provide any additional information. The OIG will consider whether to close this recommendation after the BOP (1) evaluates its cell search procedures; (2) makes any appropriate changes to those procedures through policy, training, or other measures; and (3) provides documentation of evaluation and any appropriate changes to the OIG.

Recommendation 8: The BOP should enhance existing policies regarding institutional security camera systems to ensure they specifically state that such systems must have the capacity to record video and that BOP institutions must conduct regular security camera system functionality checks.

Status: Resolved.

BOP Response: The BOP reported the following:

The BOP concurs with this recommendation.

OIG Analysis: The BOP concurred with this recommendation but did not provide any additional information. The OIG will consider whether to close this recommendation after the BOP (1) enhances existing policies regarding institutional camera systems to include the recommended language update; (2) communicates the policy update to all relevant BOP employees; and (3) provides documentation of the policy update and communication to the OIG.

LIST OF EXHIBITS – CHAPTER 2

1. Federal Bureau of Prisons (BOP) Psychological Reconstruction dated September 17, 2019, regarding inmate Jeffrey Epstein (previously exhibited in Introduction).
2. Indictment filed in the U.S. District Court for the Southern District of New York against Jefferey Epstein, dated July 2, 2019 (previously exhibited in Introduction).
3. Decision and Order Remanding Defendant filed in the U.S. District Court for the Southern District of New York against Jeffrey Epstein, dated July 18, 2019 (previously exhibited in Introduction).
4. Attorney's Guide to The Metropolitan Correctional Center, New York, New York (MCC New York), dated April 2008.
5. MCC New York, Daily Assignment Rosters, dated July 22, 2019.
6. Indictment filed in the U.S. District Court for the Southern District of New York against Tova Noel and Michael Thomas, dated November 19, 2019.
7. MCC New York, Special Housing Unit, 30 Minute Check Sheet, L-Tier, dated August 9, 2019.
8. MCC New York, Special Housing Unit, 30 Minute Check Sheet, ZA, Tier-G, dated August 10, 2019.
9. Deferred Prosecution Agreement filed in the U.S. District Court for the Southern District of New York against Tova Noel, dated May 25, 2021.
10. Deferred Prosecution Agreement filed in the U.S. District Court for the Southern District of New York against Michael Thomas, dated May 25, 2021.
11. Nolle Prosequi filed in the U.S. District Court for the Southern District of New York against Tova Noel and Michael Thomas, dated January 3, 2022.
12. 5 C.F.R. Section 2635.101, Basic Obligation of Public Service.
13. 5 C.F.R. Section 2635.705, Use of Official Time.
14. 5 C.F.R. Section 2635.704, Use of Government Property.
15. BOP Program Statement Number 3420.11, Standards of Employee Conduct, dated December 6, 2013.

16. 18 U.S.C.A. Section 1001, Statements or Entries Generally.
17. *Bryan v. United States*, 524 U.S. 184 (1998).
18. 28 C.F.R. Section 541.21, Special Housing Units (SHUs).
19. BOP Program Statement Number 5270.11, Special Housing Units, dated November 23, 2016.
20. 28 C.F.R. Section 541.22, Status When Placed in the SHU.
21. 28 C.F.R. Section 541.23, Administrative Detention Status.
22. 28 C.F.R. Section 541.27, Protection Case – Placement in Administrative Detention Status.
23. 28 C.F.R. Section 541.32, Medical and Mental Health Care in the SHU.
24. BOP Program Statement Number 5500.14, CN-1, Correctional Service Procedures Manual, dated August 1, 2016.
25. MCC New York, Specific Post Orders, SHU Number 1, dated December 7, 2018.
26. MCC New York, Specific Post Orders, SHU Number 2, dated December 7, 2018.
27. MCC New York, Special Post Orders, Special Housing Unit, dated December 7, 2018.
28. BOP Program Statement Number 5521.06, Searches of Housing Units, Inmates, and Inmate Work Areas, dated June 4, 2015.
29. BOP Program Statement Number 7331.04, Pretrial Inmates, dated January 31, 2003.
30. 28 C.F.R. Section 552.40, Purpose and Scope.
31. BOP Program Statement Number P5324.08, Suicide Prevention Program, dated April 5, 2007.
32. MCC New York, Institution Supplement, Suicide Prevention Program, dated May 21, 2013.
33. BOP Program Statement Number 5270.09, Inmate Discipline Program, dated July 8, 2011.
34. BOP Elements of Prohibited Acts, dated November 18, 2020.
35. 28 C.F.R. Section 540.102, Monitoring of Inmate Telephone Calls.

36. BOP Program Statement Number P5264.08, Inmate Telephone Regulations, dated January 24, 2008.
37. 28 C.F.R. Section 541.31, Conditions of Confinement in the SHU.
38. BOP Program Statement Number P6360.01, Pharmacy Services, dated January 15, 2005.
39. 28 C.F.R. Section 549.30, Purpose and Scope.
40. BOP Program Statement Number P6541.02, Over-the-Counter Medications, dated November 17, 2004.
41. MCC New York, Special Post Orders, General Housing Units, dated December 7, 2018.



U.S. Department of Justice
Federal Bureau of Prisons

PROGRAM STATEMENT

OPI: OGC/ELE

NUMBER: 3420.11

DATE: 12/6/2013

Standards of Employee Conduct

/s/

Approved: Charles E. Samuels, Jr.
Director, Federal Bureau of Prisons

1. PURPOSE AND SCOPE

To provide policies and procedures, referred to as the “Standards of Conduct,” to complement those issued by the Office of Government Ethics on:

- Employee conduct and responsibility.
- Ethics in matters involving conflicts of interest.
- Post-employment restrictions.
- Procurement integrity issues.
- Attorney ethics.
- Outside employment.

These standards apply to all employees of the Bureau of Prisons (Bureau), including employees of the Public Health Service and the National Institute of Corrections, and to any person detailed to any of those agencies under the Intergovernmental Personnel Act.

Such employees are subject to certain standards and prohibitions – some statutory, some regulatory, and some a matter of good ethical principles that are essential to the efficiency of the organization.

Contractors and volunteers working in Bureau facilities also are expected to conduct themselves by these standards, where applicable.

While issuances from the Office of Government Ethics and the Department of Justice address the basic standards and prohibitions applicable to Bureau employees, this Program Statement more specifically addresses situations that especially apply to Bureau employment. It cannot, however, attempt to detail every incident that could violate the Standards of Conduct.

a. Summary of Changes

Directive Rescinded

P3420.09 Standards of Employee Conduct (2/05/99)

Changes in this issuance include:

- Specifying illegal drugs prohibited under Section 5, Personal Conduct.
- Eliminating the moving traffic violations reporting requirement under Section 7, Illegal Activities.

Greater changes include those found under the Introduction of Contraband, Government Property, and Outside Employment sections.

b. Program Objectives. The expected results of this program are:

- Employees will conduct themselves in a manner that fosters respect for the Bureau of Prisons, the Department of Justice, and the U.S. Government.
- Employees will avoid situations that involve conflicts of interest with their employment.
- Employees will comply with restrictions on employment outside the Bureau and after employment with the Bureau.
- Employees will conform to procurement integrity regulations.
- Employees will uphold the ethical rules governing their professions.
- Employees will immediately report any violation, or apparent violation, of standards of conduct to their Chief Executive Officer (CEO) or another appropriate authority.
- Employees who fail to conduct themselves in accordance with these standards will be subject to appropriate sanctions.

2. DEFINITIONS

For the purposes of this Program Statement, the following definitions apply:

a. Chief Executive Officer (CEO). The Warden at institutions, the Director at staff training centers, the Residential Reentry Manager at residential reentry field offices, the Regional

Director at regional offices, and the Assistant Director of each division at the Central Office. The CEO ensures that staff are made aware of updates and revisions that affect employee conduct.

b. **Conflict of Interest.** A conflict of interest exists where responsibilities as a public servant affect, or are affected by, the employee's private interests.

c. **During the Conduct of a Procurement.** The time between the beginning and end of a procurement. The conduct of a procurement begins on the earliest date an authorized official directs that a specific action be taken to initiate a procurement. These actions include:

- Drafting a specification or a statement of work.
- Reviewing and approving a specification.
- Computing requirements or a purchase request.
- Preparing or issuing a solicitation.
- Evaluating bids or proposals.
- Selecting sources.
- Conducting negotiations.
- Reviewing and approving the award of a contract or contract modification.

The conduct of a procurement ends with the award or modification of a contract or the cancellation of the procurement.

d. **Employment.** Any form of employment or business relationship involving the provision of personal services by the employee, whether undertaken at the same time as or subsequent to current Federal employment. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, or trustee.

e. **Former Inmate.** An inmate for whom less than one year has elapsed since his/her release from Bureau custody or supervision of a Federal court (see definition of "inmate" in Section 2.g.), whichever is later.

f. **Illegal Drugs.** Controlled substances acquired in violation of Federal law.

g. **Inmate.** Persons in the custody of the Federal Bureau of Prisons or Bureau contract facilities, including persons charged with or convicted of offenses against the United States, D.C. Code felony offenders, and persons held as witnesses, detainees, or otherwise.

h. **Law Enforcement Agency.** Any local, state, or Federal entity established to carry out and enforce the criminal law.

i. **Negotiations.** Discussion or communication with another person, or a person's agent or intermediary, mutually conducted with a view toward reaching an agreement regarding possible employment with that person.

j. **Official Investigation.** Includes, but is not limited to, investigations conducted by the Federal Bureau of Investigation, Office of the Inspector General, Office of Professional Responsibility, Office of Internal Affairs, Office of Personnel Management, Special Investigative Agent, Special Investigative Supervisor, Equal Employment Opportunity Investigator, or any other official investigation authorized by the CEO.

k. **Participate.** To take action as an employee through decision, approval, disapproval, recommendation, rendering of advice, or investigation (applies to Sections 14 through 19 of this Program Statement).

l. **Particular Matter.** Matters that involve deliberation, decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons. The particular matters covered by this subpart include a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, or arrest.

m. **Procurement Official.** Any officer or employee of an agency who has participated personally and substantially in any activities involved "during the conduct of a procurement." This definition extends to contractors, subcontractors, consultants, experts, and advisors acting on behalf of, or providing advice to, an agency with respect to procurement (see Section 2.c.).

3. PUBLICATION AND INTERPRETATION

The CEO of each facility has the primary responsibility for ensuring that the Standards of Employee Conduct are provided and made known to each employee, contractor, and volunteer. The CEO must ensure that staff are made aware of updates and revisions that affect employee conduct and receive annual training on their responsibilities under this policy.

Per 5 CFR §2635.107, only actions made in reliance upon advice concerning ethical issues, received from the Ethics Office, will be protected from disciplinary action. No other authority may provide the employee this protection.

Where the employee's conduct violates a criminal statute, reliance on the advice of an ethics official cannot ensure he/she will not be prosecuted.

Each new employee, contractor, and volunteer must receive and sign for this Program Statement at the time of appointment.

Employees, contractors, and volunteers receive and sign for updated versions of this Program Statement when issued. The form Acknowledgement of Receipt of Standards of Employee Conduct (BP-A0165) is filed on the left side of the Official Personnel Folder.

Employee Development Managers, Volunteer Coordinators, or other designated staff ensure that supervisors and employees receive annual training on their responsibilities under this policy.

4. GENERAL POLICY

Bureau employees are governed by regulations in 5 CFR Part 2635. While this Program Statement clarifies the applications of those regulations in the Bureau, it does not and cannot specify every incident that would violate the Standards of Conduct.

In general, the Bureau expects its employees to conduct themselves in such a manner that their activities both on and off duty do not discredit the agency. Employees must:

- Conduct themselves in a manner that fosters respect for the Bureau of Prisons, the Department of Justice, and the U.S. Government.
- Only arrest in their official capacity as permitted by 18 U.S.C. § 3050 and other relevant provisions of the United States Code, the Program Statements **Searching, Detaining, or Arresting Visitors to Bureau Grounds and Facilities** and **Staff Entrance and Search Procedures**, or other authority officially granted to them.
- Endeavor to avoid any actions creating the appearance that they are violating the law or the ethical standards promulgated in this policy and the statutes.
- Avoid conflicts of interest in matters that affect their financial interests.
- Comply with post-employment restrictions.
- Conform to procurement integrity regulations.
- Uphold the ethical rules governing their professions, including complying with applicable licensing authority rules, except when they conflict with Federal law.
- Follow special rules to avoid conflicts of interest when seeking employment outside the Bureau.
- As soon as practicable (but no later than 24 hours) report to their CEO (or other appropriate authority such as the Office of Internal Affairs or the Office of the Inspector General) any

violation, appearance of a violation, or attempted violation of these Standards or of any law, rule, or regulation.

Every employee is required to immediately report to management any act or omission by any person that could result in a breach of institution security.

Failure by employees to follow these regulations and policy or any other Bureau policy or relevant regulation(s) could result in disciplinary action, up to and including removal (see Attachment A).

5. PERSONAL CONDUCT

Employees are expected to conduct themselves in a manner that contributes to the orderly running of Bureau facilities. Some types of behavior cannot be tolerated in the Bureau:

a. **Alcohol/Illegal Drugs.** The use of illegal drugs or the abuse of any drug, including prescription-controlled substances, is strictly prohibited. Illegal drugs include, but are not limited to:

- Marijuana.
- Cocaine.
- Ecstasy.
- Heroin.
- Amphetamines (“speed” or “crank”).
- Lysergic Acid Diethylamide (LSD).

Use of alcoholic beverages or being under the influence of alcohol while on duty or immediately before reporting for duty are prohibited. Employees are subject to disciplinary action if found to possess a .02 or greater blood alcohol content while on duty.

b. **Sexual Relationships/Contact With Inmates.** Employees may not allow themselves to show partiality toward, or become emotionally, physically, sexually, or financially involved with inmates, former inmates, or persons known (or who should have been known based on circumstances) to the employee as a family member or close friend of inmates or former inmates.

Chaplains, psychologists, and psychiatrists may continue a previously established therapeutic relationship with a former inmate in accordance with their codes of professional conduct and responsibility.

Bureau staff may not serve as program volunteers in religious services and educational programs. Under no circumstances are staff volunteers authorized to participate in inmate programs on a regular or occasional basis.

An employee may not engage in, or allow another person to engage in, sexual behavior with an inmate. There is never any such thing as *consensual* sex between staff and inmates.

Title 18, U.S. Code Chapter 109A provides penalties of up to life imprisonment for sexual abuse of inmates where the force is used or threatened. *Sexual contact* is defined as the intentional touching of the genitalia, anus, groin, breast, inner thigh, or buttocks with the intent to abuse, humiliate, harass, degrade, arouse, or gratify the sexual desire of any person.

Penetration is not required to support a conviction for sexual contact. All allegations of sexual abuse will be thoroughly investigated and, when appropriate, referred to authorities for prosecution.

Employees are subject to administrative action, up to and including removal, for any inappropriate contact, sexual behavior, or relationship with inmates, regardless of whether such contact constitutes a prosecutable crime. Physical contact is not required to subject an employee to sanctions for misconduct of a sexual nature.

c. **Additional Conduct Issues.** An employee may not offer or give to an inmate or a former inmate or any member of his/her family, or to any person known to be associated with an inmate or former inmate, any article, favor, or service that is not authorized in the performance of the employee's duties.

Neither shall an employee accept any gift, personal service, or favor from an inmate or former inmate, or from anyone known to be associated with or related to an inmate or former inmate. This prohibition includes becoming involved with families or associates of inmates.

An employee may not show favoritism or give preferential treatment to one inmate, or a group of inmates, over another.

Consistent with policies and regulations:

- An employee may not use brutality, physical violence, or intimidation toward inmates, or use any force beyond what is reasonably necessary to subdue an inmate.

- An employee may not use physical violence, threats, or intimidation toward any person visiting a Bureau work site or toward fellow employees.

In their official capacity, employees may not use profane, obscene, or abusive language when communicating with inmates, fellow employees, or others. Employees shall conduct themselves in a manner that will not be demeaning to inmates, fellow employees, or others. The above requirements also apply to situations where there is a nexus between the employee's conduct and his/her position.

An employee who becomes involved in circumstances as described in this section, Section 9 (or any situation that might give the appearance of improper involvement with inmates or former inmates or their families, including employees whose relatives are inmates or former inmates) must report the contact in writing to the CEO as soon as practicable. (This includes, but is not limited to, telephone calls or written communications with such persons outside the normal scope of employment.) The employee will then be instructed as to the appropriate course of action.

Exempted program officials must obtain prior approval to communicate with former inmates, their family members, or associates. **All communications must occur from an institution setting.**

Employees must avoid situations that give rise to a conflict of interest or the appearance of a conflict of interest (see Section 2, Definitions).

Employees shall not participate in conduct that would lead a reasonable person to question their impartiality.

6. RESPONSIVENESS

Inattention to duty in a correctional environment can result in escapes, assaults, and other incidents. Employees are required to remain fully alert and attentive during duty hours.

Because failure to respond to an emergency may jeopardize the security of the institution, as well as the lives of staff or inmates, it is mandatory that employees respond immediately, effectively, and appropriately during all emergency situations.

Employees are to obey the orders of their superiors at all times. In an emergency situation, carrying out the orders of those in command is imperative to ensure the security of the institution.

7. ILLEGAL ACTIVITIES

Illegal activities on the part of any employee, in addition to being unlawful, reflect on the integrity of the Bureau and betray the trust and confidence placed in it by the public.

It is expected that employees obey not only the letter of the law, but also the spirit of the law while engaged in personal or official activities.

Should an employee be charged with, arrested for, or convicted of any felony or misdemeanor, that employee must immediately inform and provide a written report to the CEO.

8. INTRODUCTION OF CONTRABAND

Per 28 CFR § 500.1(h), contraband is defined as “material prohibited by law, or by regulation, or material which can reasonably be expected to cause physical injury or adversely affect the security, safety, or good order of the institution.”

Introducing or attempting to introduce contraband into or upon the grounds of any Federal correctional institution, or taking or attempting to take contraband out of it, without the CEO’s knowledge and consent, is prohibited.

Staff may bring personal items into or upon the grounds of an institution, unless otherwise prohibited by the Warden. Such items must remain in the possession of the employee, and /or be secured away from inmates, and disposed of properly when no longer needed. Consult the Program Statement **Staff Entrance and Search Procedures** for additional requirements.

9. OFFICIAL INVESTIGATION

It is not the policy of the Bureau to routinely search employees or their property; however, the Bureau retains the right to conduct searches of employees when such a search is believed necessary to ensure institution security and good order. Searches are conducted in accordance with the Program Statement **Staff Entrance and Search Procedures**. Representation will be afforded to staff in accordance with the Master Agreement and Title 5.

During the course of an official investigation, employees are to cooperate fully by providing all pertinent information they may have. Full cooperation requires truthfully responding to questions and providing a signed affidavit if requested. Any employee who fails to cooperate fully or who hinders an investigation is subject to disciplinary action, up to and including removal.

In official investigations conducted by the Bureau of Prisons, an employee will be provided a copy of his/her signed affidavit upon request, absent rare or exigent circumstances. If this occurs, staff will be given the opportunity to review prior affidavits before giving another affidavit.

Employees must respond truthfully and in a timely manner to requests for information related to their background security investigation. Failure to do so may result in disciplinary action up to and including removal. Form BP-A0194, Warning and Assurance to Employee Required to Provide Information, will be provided upon request to the employee who is the subject of the investigation.

10. JUST DEBTS

Failure on the part of any employee, without good reason and in a timely manner, to honor debts acknowledged by him/her to be valid or reduced to judgment by a court, or to adhere to satisfactory arrangements for the settlement of the debts, may be cause for disciplinary action.

Depending on the circumstances, an employee who receives a legally valid garnishment order may be subject to disciplinary action.

11. CONFIDENTIALITY

Employees of the Bureau have access to official information ranging from personal data concerning staff and inmates to information involving security. Because of the varying degrees of sensitivity, such information may be disclosed or released only as required in the performance of an employee's duties or upon specific authorization from someone who has the authority to release official information. The only persons so authorized are:

- In the Central Office, the Director or designee.
- In a Regional Office, the Regional Director or designee.
- In other locations, the CEO or designee.

The above shall not be construed as a reason to deny authorized persons access to official records and files. The Bureau has an obligation to supply official information in response to requests from organizations or individuals who have been properly identified and are acting in an official capacity.

To ensure the proper use of official information, the following rules of conduct are established:

- Employees must verify the identification and authority of individuals requesting access to information before giving or discussing records, personnel files, or other official information.
- Employees may not deny authorized persons access to official information.
- Employees may not use, or release for use, official information for private purposes unless that information is available to the general public.
- Employees may not remove information from files or make copies of records or documents, except in accordance with established procedures or upon proper authorization.
- Employees may not make statements or release official information that could breach the security of the institution or endanger any person.
- Employees must guard against providing or disclosing official information to persons without a valid need to know.
- Former employees may be granted access only to information available to the general public and have no greater standing than the general public, irrespective of their past employment and any associations developed during it.

12. GOVERNMENT PROPERTY

Government property is to be used for authorized purposes only. Authorized purposes include personal use of Government office equipment such as computers, printers, fax machines, telephones, copiers, calculators, and Government-issued cellular phones, provided there is only a negligible cost to the Government.

Personal use of office equipment may take place before or after official working hours or during non-paid meal breaks.

Negligible costs are those which have no adverse impact to the Government and include, but are not limited to, the cost of electricity, ink, and ordinary wear and tear. Employees must provide their own paper.

Personal use of office equipment will not take place during official working hours, with the following exceptions:

a. **Office and Cellular Telephones.** Employees may place a personal call on a Government telephone during official working hours if the call:

- Does not adversely affect the performance of official duties by the employee or the Bureau.
- Is of reasonable duration and frequency.
- Could not reasonably have been made at another time.

- Is within the employee's local commuting area (not applicable to cellular telephones).

b. **Fitness Equipment.** Employees may use Government-owned fitness equipment during breaks if such equipment is intended exclusively for employee use.

This policy does not prevent the establishment of additional rules or restrictions, for business reasons, on the use of Government property.

13. CREDENTIALS

Bureau identification cards or credentials may always be used by staff to verify Bureau employment to any entity.

Employees may not obtain or use identification cards or badges from sources other than the Bureau that give the appearance of being an official Bureau credential or badge.

Employees may never use Agency-issued identification cards or credentials to represent that it is a Bureau requirement to carry a personal firearm on or off duty.

Employees may use credentials to prove Government employment for purposes of permissible discounts offered to a broad class of Government employees.

14. OUTSIDE EMPLOYMENT

a. **Definitions** (for purposes of this section)

(1) **Criminal Matters.** Involvement with Federal, state, or local law enforcement agencies, matters carried out under 18 U.S.C., involvement with Federal, state, or local inmates.

(2) **Outside Employment.** Any form of employment, business relationship, or activity involving the provision of personal services, whether or not for compensation, other than when discharging official duties.

It includes, but is not limited to, services as a lawyer, officer, director, trustee, employee, agent consultant, contractor, or general partner (see 5 C.F.R. § 3801.106). Employment may also include speaking, writing, and teaching (see 5 C.F.R. § 2635.807).

b. **General Limitations.** An employee may not engage in outside employment, as defined above, that conflicts with his/her official duties. In addition, employees may not engage in:

- Any outside employment or activity that involves criminal matters or habeas corpus matters, be it Federal, state, or local.
- The practice of law, unless it is uncompensated and in the nature of community service, or unless it is on behalf of the employee or his/her parents, spouse, or children.
- Litigation, investigations, grants, or other matters in which the Department of Justice is or represents a party, witness, litigant, investigator, or grant-maker (see 5 C.F.R. § 3801.106).

c. **Approval.**

(1) **Prior Approval.** An employee must obtain written approval before engaging in outside employment (as defined above) which involves:

- The practice of law (see Section 15, Rules for Attorneys).
- A subject matter, policy, or program that is in the Bureau's area of responsibility (see 5 C.F.R. § 3801.106(c)).

This includes, but is not limited to, architects, attorneys, chaplains, physicians, psychologists, security guard positions that are armed or have police powers, work in a law enforcement environment (firearms instructors, translators, administrative positions, etc.), court-appointed advocates, private investigators, judgement recovery, and auxiliary law enforcement, to include state militia, sheriffs, search and rescue, and fish and game wardens.

(2) **Notification.** All other employees engaging in outside employment in accordance with this section must provide written notification to the CEO, using the appropriate form (see Section 14.c.(5)), within 30 days from the date outside employment begins. The CEO will indicate receipt of notification and may provide any comments to the employee.

(3) **Exceptions.** Employees who perform voluntary service, involving religious activity, employee's club, credit union, or union activities, which do not conflict with their official duties or with the Bureau's mission, are exempt from the requirement to request approval for these activities.

(4) **Other Requirements.**

- Any approval granted for outside employment or activity applies only to the particular position or activity referenced in the application and approval.
- Any employee whose outside employment status changes due to accepting a different position with the same company, beginning work for a different company, a change of BOP

duty station, etc., must submit a new request form, and receive approval for the outside employment per Section 14.c.(1) or c.(2), above.

- Any employee who wishes to serve as an officer or director of any organization, whether compensated or uncompensated, must complete an outside employment request form. Certain high-level officials who wish to serve as an officer or director of an organization must submit the request through the Director to the Deputy Attorney General.

(5) **Forms.** Employees seeking outside employment within their profession must complete Form BP-A0543, Request for Approval for Outside Employment Within One's Profession. This must be completed with all signatures **before** the employee may engage in the outside practice of his/her profession.

Employees seeking all other types of outside employment must complete Form BP-A0166, Request for Approval for Outside Employment, or BP-A0927, Notification of Outside Employment.

The employee is responsible for supplying all relevant information required on the forms. Failing to do this could result in processing delays or a denial of the request.

(6) **Waiver.** Employees whose request for approval has been denied in accordance with the General Limitations in Section 14.b. may request a waiver per 5 CFR 3801.106(b)(2).

d. **Outside Employment Within One's Profession.** Employees serving in the professions listed below and wishing to engage in outside employment within that profession must have the approval of their immediate supervisor, CEO, Regional Director, and the Director:

- Architect.
- Attorney.
- Chaplain.
- Physician.
- Psychologist.

Attorneys who seek to practice law outside the Bureau must also refer to Section 15, Rules for Attorneys.

Note: For the purpose of this subsection, teaching, writing, and speaking are not considered practicing within one's profession.

e. **Expert Witness.** An employee may not serve, other than on behalf of the United States, as an expert witness (with or without compensation) in any proceeding before a court or agency of the United States in which the United States is a party unless his/her participation is authorized by the Bureau. Authorization may be provided by the Bureau Ethics Officer, per 5 C.F.R. § 2635.805(c).

f. **Other Government Employment.** With limited exceptions, Bureau employees may not be employed by or contract for employment with any other Federal or law enforcement agency while employed by the Bureau. This prohibition does not apply to Federal military service, including reserve duty and National Guard service.

g. **Guidance.** Employees should contact the Ethics Office for guidance concerning outside employment.

15. RULES FOR ATTORNEYS

a. **Approval of Exceptions.** Attorneys for the Bureau may not practice law for compensation on behalf of any other person or entity without the written approval of the Deputy Attorney General. However, Bureau attorneys may perform uncompensated legal practice outside the Bureau if:

- The work does not violate 18 U.S.C. §§ 203 and 205.
- The General Counsel has approved the request.
- The work does not involve criminal matters.

b. **Confidentiality.** Only under limited circumstances does the attorney/client privilege of confidentiality apply to communications with a Bureau employee.

c. **Successive Government and Private Employment.** A former Bureau attorney may not represent a private client in connection with a matter in which the attorney participated personally and substantially as a public officer. In such a case, the attorney's firm may have obligations to screen the former employee under applicable bar rules from any participation in the matter in which he/she participated in personally, and is awarded no part of the fee.

Like any Bureau employee, an attorney may not negotiate for private employment with any party involved in a Bureau matter in which he/she is participating personally and substantially.

d. **Other Duties.** In addition to the ethical rules attorneys must follow, the duties of a Bureau attorney are further defined by Federal regulations and Bureau policy.

16. CONFLICTS OF INTEREST

Bureau employees, acting in their official capacities, must avoid situations that affect or appear to affect their private interests, financial or non-financial. An employee may not engage in outside activities that conflict with his/her official duties.

a. **Prohibitions.** Employees are prohibited from taking official action, on behalf of the Government, on matters that affect the financial interests of:

- The employee, spouse, minor child, or a general partner of an employee.
- An organization where the employee is an officer, director, trustee, partner, or employee.
- An organization the employee is negotiating with for future employment (18 U.S.C. § 208).

b. **Waivers.** The Director may grant an individual waiver if the interest is found not to be so substantial as to affect the employee's service to the Bureau.

An employee with a conflict of interest may ask to have himself or herself recused from the matter, sell the asset, or resign.

An employee must seek written authorization before participating in a matter that could lead a reasonable person to question the his/her impartiality, even if there is no statutory conflict of interest (5 C.F.R. § 2635.502).

Procurement officials: see Section 19, Procurement Integrity.

17. SEEKING OTHER EMPLOYMENT

A Bureau employee who wishes to seek employment with persons who would be affected by the performance or nonperformance of the employee's official duties is required to disqualify himself or herself from participation in any matter that will have a direct and predictable effect on the financial interests of the person with whom he/she is negotiating.

When an employee is not actually negotiating for employment, but lacks impartiality in dealing with a prospective employer, the employee should disqualify himself or herself.

A Bureau employee who is or should be aware of the need to disqualify himself or herself from participation in a particular matter must contact his/her supervisor and request in writing to be removed from the matter.

18. POST-EMPLOYMENT

The Office of Government Ethics, in accordance with statutes, has issued post-employment restrictions for Federal employees who leave Federal service. There is a general restriction on the representation of parties in matters related to their Federal employment. This regulation is not designed to bar an individual from accepting employment with any private or public employer after his/her service at the Bureau, but does prohibit certain acts that are detrimental to public confidence in Government.

a. **Lifetime Prohibition.** Former Bureau employees are prohibited from representing another party before the Government on a particular matter involving specific parties in which they participated personally and substantially while working for the Government. This prohibition does not apply to:

- An appearance or communication involving purely social contacts.
- A request for publicly available documents.
- A request for purely factual information or the supplying of such information (18 U.S.C. § 207(a)(1)).

b. **Two-Year Prohibition.** After leaving the Bureau, a former employee is restricted from acting as a representative on a particular matter for which the employee had official responsibility, rather than personal participation. The restriction applies if the former employee knew, or reasonably should have known, that the matter was pending under his/her official responsibility during his/her last year of Government service (18 U.S.C. § 207(a)(2)).

c. **One-Year Prohibition.** Former senior-level employees who meet a certain compensation threshold (please consult with the Ethics Office for the current threshold) are prohibited from representing any party before or making any communications with the intent to influence to any Government agency for one year (18 U.S.C. § 207(c)).

19. PROCUREMENT INTEGRITY

During the conduct of a procurement, a procurement official is prohibited from knowingly, directly or indirectly, soliciting or accepting any promise of future employment or business from an officer, employee, representative, agent, or consultant of a competing contractor. This prohibition includes engaging in any discussion of future employment or business opportunity. See the Procurement Integrity Act, 41 U.S.C. § 423.

a. **Recusal To Discuss Employment.** In certain instances, a procurement official may obtain permission to withdraw from further participation in a procurement to discuss future employment with a competing contractor. An eligible procurement official may, in accordance with specific procedures in the regulations, request to be recused from participation in the procurement.

A procurement official is **not** eligible for recusal if, during the period beginning with the issuance of a procurement solicitation and ending with the award of a contract, he/she has participated personally and substantially in the evaluation of bids or proposals, the selection of sources, or the conduct of negotiations.

An individual may not commence discussions with a competing contractor until he/she has received written approval of the recusal request from his/her supervisor.

Rejection of a recusal request is not an adverse personnel action.

b. **Post-Employment Restrictions For Procurement Officials.** The Procurement Integrity Act places restrictions on employees involved in procurement who leave Federal service. A former procurement official cannot, for one year after his/her last personal and substantial involvement in a procurement in excess of \$10,000,000, accept compensation from such contractor as an employee, officer, director, or consultant. This does not prohibit former procurement officials from accepting compensation from any division or affiliate of a contractor that does not produce the same or similar products or services for which the employee contracted while a Government employee.

20. AGENCY ACA ACCREDITATION PROVISIONS

- American Correctional Association, 4th Edition, Standards for Adult Correctional Institutions: 4-4048, 3-4063 and 4-4069.
- American Correctional Association, 3rd Edition, Standards for Adult Local Detention Facilities: 3-ALDF-1C-01 and 3ALDF-1C-15, 3-ALDF-1C-23.
- American Correctional Association, 2nd Edition, Standards for Administration of Correctional Agencies: 2-CO-1C-01, 2-CO-1C-04, 2-CO-1C-20, 2-CO-1C-24.

REFERENCES

Program Statements

P1237.13	Information Security Programs (3/31/06)
P3730.05	Workplace Violence Prevention, Staff (3/23/04)
P3735.04	Drug Free Workplace Program (6/30/97)
P3740.01	Staff Entrance and Search Procedures (7/17/13)
P5300.20	Volunteers and Citizen Participation Programs (6/01/99)
P5500.11	Correctional Services Manual (10/10/03)
P5510.15	Searching, Detaining, or Arresting Visitors to Bureau Grounds and Facilities (7/7/13)
P5840.04	Staff Correspondence About Inmates (9/01/99)

Federal Regulations

P.L. 108-277	Law Enforcement Officers Safety Act of 2004
18 U.S.C. § 201	Bribery; Illegal Gratuities
18 U.S.C. § 203	Representational Issues
18 U.S.C. § 205	Representational Issues
18 U.S.C. § 207	Post-Employment Statute
18 U.S.C. § 208	Conflict of Interest Statute
18 U.S.C. § 2241-45	Sexual Abuse
41 U.S.C. § 423	Procurement Integrity Act
5 CFR § 2635	Standards of Ethical Conduct for Employees of the Executive Branch (8/7/92)
5 CFR § 2637	Post-Employment (12/30/93)
5 CFR § 2641	Post-Employment (1/28/92)
5 CFR § 3801	Supplemental Standards of Ethical Conduct for Employees of the Department of Justice (5/02/97)
28 CFR § 50.15	Representation of Federal Employees Sued, Subpoenaed or Charged in Their Individual Capacities (4/9/90)
28 CFR § 500.1	Contraband
Executive Orders 12674 and 12731	Prescribing Standards of Ethical Conduct
DOJ Order 1735.1	Procedures for Complying with Uniform Standards and Other Ethics Requirements (8/25/98)

Other Standards

ABA Model Rule 1.11	Successive Government and Private Employment Rules for Lawyers (2/07/87)
ABA Model Rule 1.6	Confidentiality of Information (8/2/83)

BOP Forms

BP-A0165	Acknowledgement of Receipt of Standards of Employee Conduct
BP-A0166	Request for Approval for Outside Employment
BP-A0194	Warning and Assurance to Employee Required to Provide Information
BP-A0543	Request for Approval for Outside Employment Within One's Own Profession
BP-A0927	Notification of Outside Employment

Records Retention Requirements

Requirements and retention guidance for records and information applicable to this program are available in the Records and Information Disposition Schedule (RIDS) system on Sallyport.

Attachment A. Standard Schedule of Disciplinary Offenses and Penalties

1. This table is intended to be used as a guide in determining appropriate discipline to propose according to the type of offense committed. The offenses listed are not inclusive of all offenses.
2. Ordinarily, penalties proposed should be within the range of penalties provided for an offense. In aggravated cases, a penalty outside the range of penalties may be imposed. For example, supervisors, because of their responsibility to demonstrate exemplary behavior, may be subject to a greater penalty than is provided in the range of penalties. When a more severe penalty than provided for in the range of penalties is proposed, the notice of proposed action must provide a justification.
3. The deciding official considers relevant circumstances, including mitigating and aggravating factors, when determining the appropriate penalty. The range of penalties provided for most offenses is intentionally broad, ranging from official reprimand to removal. While the principles of progressive discipline are normally applied, it is understood that there are offenses so egregious as to warrant severe sanctions for the first offense, up to and including removal. For example, if an incident is of a sexual nature or includes sexual harassment or is a criminal matter, the penalty must be more severe. This is especially true in cases where there is no indication that the employee would be corrected by a lesser penalty, or if the offense is of such a nature that reoccurrence could jeopardize security or bring disrepute on the Bureau of Prisons. For example, if an employee failed to respond to an emergency, even if that emergency turned out to be a false alarm, removal would be appropriate if the deciding official was not convinced that the employee would respond promptly to any future emergency.
4. Where appropriate, consideration may be given to a demotion or other action in lieu of removal.
5. Suspension penalties on this schedule refer to calendar days. Except for emergency suspensions and indefinite suspensions, all disciplinary suspensions begin on the first workday of the employee's next regularly scheduled work week.
6. The reckoning period is defined as that period of time following the date management becomes aware of the offense, during which that offense can be used to determine the sanction for a subsequent offense.
7. Offenses falling within the reckoning period, even though unrelated, should be considered when determining the appropriate action.
8. Where the deciding official substitutes a letter of reprimand in lieu of a greater proposed sanction, the letter of reprimand itself is to be separate from the decision letter and is not to refer to the greater sanction proposed.

NATURE OF OFFENSE	EXPLANATION	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE	RECKONING PERIOD
1. Unexcused or unauthorized absence of 8 hours or less.	Unauthorized absence of 8 hours or less, tardiness, leaving the job without permission.	Official reprimand to 1-day suspension.	Official reprimand to 5-day suspension.	Official reprimand to removal.	6 months.
2. Unexcused or unauthorized absence of between 1 and 5 consecutive workdays.	Unauthorized absence of 8 to 40 hours.	1-day to 5-day suspension.	5-day to 14-day suspension.	14-day suspension to removal.	1 year.
3. Excessive unauthorized absence.	Unauthorized absence of more than 5 consecutive workdays.	5-day suspension to removal.	14-day suspension to removal.	Removal.	2 years.
4. Careless workmanship or negligence resulting in spoilage or waste of materials or delay in work production.		Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.
5. Failure or delay in carrying out work assignments, or instructions of superiors.	Includes anyone with authority to give such assignments or functions.	Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.
6. Failure or delay in carrying out a direct order.	Includes anyone with authority to give such orders.	3-day suspension to removal.	14-day suspension to removal.	Removal.	2 years.

NATURE OF OFFENSE	EXPLANATION	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE	RECKONING PERIOD
7. Inattention to duty.	Potential danger to safety of persons and/or actual damage to property is considered in determining severity of the penalty, as is potential or actual adverse impact on Government operation. Includes, but is not limited to, loafing, wasting time, idleness, or unproductive activities.	Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.
8. Insubordination.	Disobedience to constituted authorities, or refusal to carry out a proper order from any supervisor or other official having responsibility for the work of the employee.	14-day suspension to removal.	15-day suspension to removal.	Removal.	2 years.
9. Disorderly conduct, fighting, threatening, or attempting to inflict bodily injury to another, engaging in dangerous horseplay.	Workplace violence implications are a primary consideration when considering the penalty.	Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.

NATURE OF OFFENSE	EXPLANATION	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE	RECKONING PERIOD
10. Disrespectful conduct, use of insulting, abusive, or obscene language to or about others.	Includes verbal abuse of inmates, former inmates, their families, or friends (known or who should be known).	Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.
11. Reporting for duty or being under the influence of intoxicants or other drugs; unauthorized possession of intoxicants or drugs on Government or leased premises.	Includes, but is not limited to, any substance(s) that impairs and/or interferes with an employee's ability to perform his/her duties.	5-day suspension to removal.	14-day suspension to removal.	30-day suspension to removal.	2 years.
12. Failure to follow orders during an emergency situation.	Includes anyone with authority to give such orders. Potential danger to safety and/or damage to property is a primary consideration in determining severity of the penalty.	15-day suspension to removal.	Removal.	Removal.	2 years.

NATURE OF OFFENSE	EXPLANATION	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE	RECKONING PERIOD
13. Failure to respond immediately to an emergency situation.	Potential danger to safety of persons and/or damage to property is a primary consideration in determining severity of the penalty.	Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.
14. Failure to observe safety precautions.	Includes: (1) Precautions for personal safety. (2) Posted rules. (3) Signs. (4) Written or oral safety instructions. (5) Failure to use protective clothing and equipment.	Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.
15. Endangering the safety of or causing injury to staff, inmates, or others through carelessness or failure to follow instructions.		7-day suspension to removal.	14-day suspension to removal.	Removal.	2 years.
16. Giving an inmate an order that could be hazardous to health and safety.	Potential danger to safety of persons and/or actual damage to property is a primary consideration in determining severity of the penalty.	Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.

NATURE OF OFFENSE	EXPLANATION	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE	RECKONING PERIOD
17. Unauthorized possession or use of, or loss of, Government property or property of others.		Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.
18. Willful use or authorization of use of a U.S. Government-owned or -leased motor vehicle or aircraft for other than an official purpose.	31 U.S.C. Section 1349 provides for a minimum 30-day suspension.	30-day suspension to removal.	45-day suspension to removal.	Removal.	2 years.
19. Theft or attempted theft or misappropriation of Government property or the property of others.		Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.
20. Conversion of Government funds or funds in Government custody to personal use.	Includes, but is not limited to, travel advances, imprest funds, amounts received as collections, and inmate funds.	Removal.	Removal.	Removal.	2 years.
21. Unauthorized possession or use of a Government credit card.		Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.

NATURE OF OFFENSE	EXPLANATION	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE	RECKONING PERIOD
22. Damage to Government property or the property of others.		5 day suspension to removal.	14-day suspension to removal.	Removal.	2 years.
23. Gambling or unlawful betting on Government-owned or -leased premises.		Official reprimand to 10-day suspension.	10-day suspension to removal.	14-day suspension to removal.	2 years.
24. Promotion of gambling on Government-owned or -leased premises.		Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.
25. Physical abuse of an inmate.	In determining the severity of the penalty, the circumstances of the incident (were the employee's actions totally unwarranted?) should be given more consideration than the presence or absence of physical injury.	Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.
26. Soliciting gifts, favors, or bribes in connection with official duties.		7 day suspension to removal.	14-day suspension to removal.	Removal.	2 years.

NATURE OF OFFENSE	EXPLANATION	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE	RECKONING PERIOD
27. Receiving gifts, favors, or bribes in connection with official duties.		Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.
28. Acceptance of any gift or favor from an inmate or former inmate.	Value of gift or favor and the reasons for accepting are primary considerations in determining severity of penalty.	5-day suspension to removal.	14-day suspension to removal.	Removal.	2 years.
29. Giving or offering an unauthorized article or favor to any inmate, their families, or friends.	Value of article or favor and the reasons for giving are primary considerations in determining severity of penalty.	Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.
30. Preferential treatment of inmates.	Potential or actual negative reaction of other inmates is a primary consideration in determining severity of penalty.	5-day suspension to removal.	14-day suspension to removal.	Removal.	2 years.
31. Improper relationship with inmates, former inmates, their families, or associates.	Degree of involvement is a primary consideration in determining severity of penalty.	15-day suspension to removal.	30-day suspension to removal.	Removal.	2 years.

NATURE OF OFFENSE	EXPLANATION	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE	RECKONING PERIOD
32. Aiding or abetting inmate violation or attempted violation of any law, rule, or regulation or commission of any prohibited act.	Degree of aid and seriousness of violation is a primary consideration in determining severity of penalty.	30-day suspension to removal.	45-day suspension to removal.	Removal.	2 years.
33. Failure to report to management any violation or attempted violation of contacts with inmates, former inmates, their families, or associates, not in the performance of their duties.		1-day suspension to removal.	7-day suspension to removal.	15-day suspension to removal.	2 years.
34. Falsification, misstatement, exaggeration, or concealment of material fact in connection with employment, promotion, travel voucher, any record, investigation, or other proper proceeding.	Includes, but is not limited to, the destruction of records to conceal facts, and a concealed conflict of interest in the performance of official duties.	30-day suspension to removal.	45-day suspension to removal.	Removal.	2 years.

NATURE OF OFFENSE	EXPLANATION	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE	RECKONING PERIOD
35. Refusal to cooperate in any official U.S. Government inquiry or investigation, including a refusal to answer work-related questions or attempting to influence others involved in the inquiry.	Includes administrative or criminal investigation, grievance inquiry, EEO investigation, and any other administrative inquiry.	Removal.	Removal.	Removal.	2 years.
36. Refusal to undergo a search of person or property.		Removal.	Removal.	Removal.	2 years.
37. Criminal, dishonest, infamous, or notoriously disgraceful conduct.	Includes conduct on or off duty.	Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.
38. Conduct that could lead others to question an employee's impartiality.	Includes, but is not limited to, a financial, sexual, or emotional relationship with a subordinate in a supervisor's chain of command.	Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.

NATURE OF OFFENSE	EXPLANATION	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE	RECKONING PERIOD
39. Discrimination in official action against an employee or applicant because of race, religion, sex, national origin, age, handicap, or sexual orientation, or any reprisal action taken against an employee for filing a discrimination complaint.		Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.
40. Use of Department of Justice identification for other than authorized purposes.	Example: Use to coerce, intimidate, or deceive (includes ID cards, badges, and other Bureau credentials).	Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.
41. Intentional violations of rules governing searches and seizures.		7-day suspension to removal.	15-day suspension to removal.	Removal.	2 years.
42. Reckless disregard of rules governing searches and seizures.		3-day suspension to removal.	14-day suspension to removal.	Removal.	1 year.

NATURE OF OFFENSE	EXPLANATION	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE	RECKONING PERIOD
43. Negligent violations of rules governing searches and seizures.		1-day to 5-day suspension.	7-day to 14-day suspension.	Official reprimand to removal.	1 year.
44. Unauthorized dissemination of official information.		Official reprimand to 5-day suspension.	5-day to 14-day suspension.	14-day suspension to removal.	2 years.
45. Use of official information for private purposes.	Potential personal gain is a primary consideration in determining severity of the penalty.	Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.
46. Unauthorized removal of records or documents.	Consequences of loss or breach of security is a primary consideration in determining severity of the penalty.	Official reprimand to removal.	5-day suspension to removal.	14-day suspension to removal.	2 years.
47. Release of information that could breach the security of the institution.	Consequences or potential consequences is a primary consideration in determining severity of the penalty.	3-day suspension to removal.	5-day suspension to removal.	14-day suspension to removal.	2 years.

NATURE OF OFFENSE	EXPLANATION	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE	RECKONING PERIOD
48. Improper denial of official information to an authorized official.		Official reprimand to 5-day suspension.	5-day to 14-day suspension.	14-day suspension to removal.	2 years.
49. Breach of facility security.		Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.
50. Failure to report any breach or possible breach of facility security.		1-day suspension to removal.	5-day suspension to removal.	14-day suspension to removal.	2 years.
51. Introduction of contraband.	Nature of article and degree of involvement are primary considerations in determining severity of the penalty.	10-day suspension to removal.	15-day suspension to removal.	Removal.	2 years.
52. Engaging in outside employment without approval.		Official reprimand.	5-day suspension to removal.	14-day suspension to removal.	2 years.
53. Failure to honor just debts without good cause.	A just financial obligation is one acknowledged by the employee, reduced to judgment by a court, or arranged by settlement.	Official reprimand to 5-day suspension.	5-day to 14-day suspension.	14-day suspension to removal.	2 years.

NATURE OF OFFENSE	EXPLANATION	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE	RECKONING PERIOD
54. Failure to report arrest.		Official reprimand.	5-day suspension to removal.	14-day suspension to removal.	2 years.
55. Misconduct off the job.		Official reprimand to removal.	5-day suspension to removal.	14-day suspension to removal.	2 years.
56. Failure to report a violation of the Standards of Conduct, or retaliation or discrimination against those who make such a report.	Offense includes failure to report violation of Program Statement, Government ethics regulations, EEO laws, and criminal laws. In particular, supervisors or managers must report sexual harassment observed by or reported to them. No retaliation can be taken against staff or inmates who report any such violations.	Official reprimand to removal.	14-day suspension to removal.	Removal.	2 years.



U.S. Department of Justice
Federal Bureau of Prisons

PROGRAM STATEMENT

OPI: CPD/CSB

NUMBER: 5270.11

DATE: November 23, 2016

Special Housing Units

/s/

Approved: Thomas R. Kane

Acting Director, Federal Bureau of Prisons

1. PURPOSE AND SCOPE

§ 541.20 Purpose.

This subpart describes the Federal Bureau of Prisons' (Bureau) operation of special housing units (SHU) at Bureau institutions. The Bureau's operation of SHUs is authorized by 18 U.S.C. 4042(a)(2) and (3).

a. **Program Objectives.** The expected results of this program are:

- Special Housing Unit placement should always serve a specific penological purpose.
- Inmates are housed in the least restrictive setting necessary to ensure their own safety, as well as the safety of staff, other inmates, and the public.
- A safe and orderly environment will be provided for staff and inmates.
- Living conditions for inmates in disciplinary segregation and administrative detention will meet or exceed applicable standards.
- Accurate and complete records will be maintained on conditions and events in special housing units.

Federal Regulations from 28 CFR are shown in this type.

Implementing instructions are shown in this type.

b. Summary of Changes

Policy Rescinded

P5270.10 Special Housing Units (7/29/11)

Memorandum from Assistant Director Scott Dodrill, Secure Housing Unit Operations, dated 3/2/10

Memorandum from Assistant Director Frank Strada, Special Housing Unit Training, dated 4/17/2015

The following changes have been incorporated into the policy:

- Several changes have been implemented to adhere to Department of Justice recommendations regarding guiding principles.
- Training standards have been updated.
- Alternate Clothing guidance is provided.
- Objectives were defined.
- Forms have been updated.
- Circumstances under which pregnant inmates can be placed in SHU have been defined.
- Psychological concerns regarding SHU placements have been addressed.

c. **Institution Supplement.** None required. Should local facilities make any changes outside the required changes in the national policy or establish any additional local procedures to implement the national policy, the local Union may invoke to negotiate procedures or appropriate arrangements.

2. SPECIAL HOUSING UNITS (SHUS)

§ 541.21 Special Housing Units (SHUs).

Special Housing Units (SHUs) are housing units in Bureau institutions where inmates are securely separated from the general inmate population, and may be housed either alone or with other inmates. Special housing units help ensure the safety, security, and orderly operation of correctional facilities, and protect the public, by providing alternative housing assignments for inmates removed from the general population.

For inmates with suspected or confirmed contagious diseases, refer to the Program Statements **Intake Screening**, **Infectious Disease Management**, and **Patient Care**, and, when applicable, the Pandemic Influenza Plan.

Alternative segregation housing arrangements outside the Special Housing Unit itself must be proposed by the Warden to the Regional Director, and ultimately approved by the Assistant Director, Correctional Programs Division, before activation. Alternative segregation housing of this type will only be approved as SHU overflow for inmates in administrative detention or disciplinary segregation status. Operation of such alternative segregation housing requires compliance with all Bureau rules, policies, staffing, and post orders for operating Special Housing Units.

General population inmates are not permitted to enter a secure housing unit to interact with inmates for dispute resolutions, intelligence gathering, or security threat group/disruptive group meetings. This also applies to removing inmates from a secure housing unit to meet with inmates in general population. Institution staff must rely on trained investigative techniques, link analysis, and other means of gathering information without allowing inmates into a secure housing setting to conduct face-to-face meetings with one another.

Inmates who are pregnant, who are post-partum (up to 8 weeks), who recently had a miscarriage (up to 4 weeks), or who recently had a terminated pregnancy (up to 4 weeks) should not be placed in restrictive housing. In rare situations, these inmates may be placed in restrictive housing as a temporary response to behavior that poses a serious and immediate risk of physical harm or to ensure the safety, security, and orderly running of a BOP facility.

3. STATUS WHEN PLACED IN THE SHU

§ 541.22 Status when placed in the SHU.

When placed in the SHU, you are either in administrative detention status or disciplinary segregation status.

(a) *Administrative detention status.* Administrative detention status is an administrative status which removes you from the general population when necessary to ensure the safety, security, and orderly operation of correctional facilities, or protect the public. Administrative detention status is non-punitive, and can occur for a variety of reasons.

The Warden may impose temporarily more restrictive conditions on an inmate (which may be in an area ordinarily set aside for disciplinary segregation and therefore requires the withdrawal of privileges ordinarily afforded in administrative detention status, until a hearing before the DHO can be held) who:

- Is causing a serious disruption (threatening life, serious bodily harm, or property) in administrative detention.
- Cannot be controlled within the physical confines of administrative detention.
- Upon advice of qualified health personnel, does not require confinement in the institution hospital if the institution has one for mental or physical treatment, or who would ordinarily be housed in the institution hospital for mental or physical treatment, but who cannot safely be housed there because the hospital does not have a room or cell with adequate security provisions.

Inmate confined under these more restrictive conditions must have their status reviewed and fully documented on a new BP-A0321 every 5 days.

The Warden may delegate this authority no further than to the official in charge of the institution when the move is necessary.

A fully documented report Special Housing Unit – Temporary Restrictive Housing Order (BP-A0321) is maintained in the Inmate Central File.

(b) *Disciplinary segregation status.* Disciplinary segregation status is a punitive status imposed only by a Discipline Hearing Officer (DHO) as a sanction for committing a prohibited act(s).

4. ADMINISTRATIVE DETENTION STATUS

§ 541.23 Administrative detention status.

You may be placed in administrative detention status for the following reasons:

(a) *Pending Classification or Reclassification.* You are a new commitment pending classification or under review for Reclassification.

This includes newly arrived inmates from the Bus, Airlift, and U.S. Marshals Service.

(b) *Holdover Status.* You are in holdover status during transfer to a designated institution or other destination.

(c) *Removal from general population.* Your presence in the general population poses a threat to life, property, self, staff, other inmates, the public, or to the security or orderly running of the institution and:

- (1) Investigation.** You are under investigation or awaiting a hearing for possibly violating a Bureau regulation or criminal law;
- (2) Transfer.** You are pending transfer to another institution or location;
- (3) Protection cases.** You requested, or staff determined you need, administrative detention status for your own protection; or
- (4) Post-disciplinary detention.** You are ending confinement in disciplinary segregation status, and your return to the general population would threaten the safety, security, and orderly operation of a correctional facility, or public safety.

Staff must obtain approval from a Lieutenant or the Captain before placing an inmate in Administrative Detention status pending investigation of a disciplinary violation. When considering approval for Administrative Detention, the seriousness of the violation should be reviewed.

In making Special Housing determination, officials should consider the seriousness of the alleged offense, including whether the offense involved violence, involved escape, or posed a threat to institutional safety or the orderly running of the institution.

If an inmate is terminating confinement in disciplinary segregation and staff determine placement in the general population is not prudent, the inmate may be placed in administrative detention status if warranted by the conditions established above. The decision for post-disciplinary detention must be based on a separate review, not solely on the initial hearing before the DHO that resulted in the inmate's placement in disciplinary segregation.

The Segregation Review Official (SRO) advises the inmate of this determination and the reason for the action via an Administrative Detention Order (ADO; BP-A0308). The Warden or shift supervisor can order immediate segregation. Ordinarily, within 24 hours of an inmate's placement in Administrative Detention, a supervisory official not involved in the initial placement will review and approve the placement decision.

Except for pretrial inmates or inmates in a control unit program, staff ordinarily, within 90 days of an inmate's placement in post-disciplinary detention, must either return the inmate to the general inmate population or request a transfer of the inmate to a more suitable institution using Form EMS-A409, Request for Transfer/Application of Management Variable. The Regional Correctional Programs Administrator will be copied on the completed form.

The institution must generate a regional referral for each inmate in post-disciplinary detention in excess of 90 days that includes case-specific information stating why the inmate is not appropriate for return to general population or immediate transfer. The Regional Director must submit a recommendation for post-disciplinary detention in excess of 90 days and every additional 60 days thereafter to the Assistant Director, Correctional Programs Division (CPD) for concurrence. Distribution includes a copy to the GroupWise mailbox BOP-CPD/DHO~.

The institution generates an ADO that cites the same case-specific information and includes documentation indicating that the SRO has advised the inmate of the basis for the extended stay.

5. DISCIPLINARY SEGREGATION STATUS

§ 541.24 Disciplinary segregation status.

You may be placed in disciplinary segregation status only by the DHO as a disciplinary sanction.

6. NOTICE RECEIVED WHEN PLACED IN THE SHU

§ 541.25 Notice received when placed in the SHU.

You will be notified of the reason(s) you are placed in the SHU as follows:

The Lieutenant or other correctional supervisor prepares an Administrative Detention Order (ADO; BP-A0308). The specific reason for placement in SHU must be supported by objective evidence and clearly articulated in the narrative section of the ADO. A new ADO is required if an inmate's status in administrative detention changes. Inmates will remain in SHU for no longer than necessary to address the specific reason for placement. Distribution of copies is indicated on the ADO.

(a) *Administrative detention status.* When placed in administrative detention status, you will receive a copy of the administrative detention order, ordinarily within 24 hours, detailing the reason(s) for your placement. However, when placed in administrative detention status pending classification or while in holdover status, you will not receive an administrative detention order.

Pending classification refers to newly arrived inmates.

(b) *Disciplinary segregation status.* When you are to be placed in disciplinary segregation status as a sanction for violating Bureau regulations, you will be informed by the DHO at the end of your discipline hearing.

7. REVIEW OF PLACEMENT IN THE SHU

§ 541.26 Review of placement in the SHU.

Your placement in the SHU will be reviewed by the Segregation Review Official (SRO) as follows:

(a) *Three day review.* Within three work days of your placement in administrative detention status, not counting the day you were admitted, weekends, and holidays, the SRO will review the supporting records. If you are in disciplinary segregation status, this review will not occur.

For reviews of Protection Cases see section 9.

(b) *Seven day reviews.* Within seven continuous calendar days of your placement in either administrative detention or disciplinary segregation status, the SRO will formally review your status at a hearing you can attend. Subsequent reviews of your records will be performed in your absence by the SRO every seven continuous calendar days thereafter.

(c) *Thirty day reviews.* After every 30 calendar days of continuous placement in either administrative detention or disciplinary segregation status, the SRO will formally review your status at a hearing you can attend.

(d) *Administrative remedy program.* You can submit a formal grievance challenging your placement in the SHU through the Administrative Remedy Program, 28 CFR part 542, subpart B.

28 CFR Part 542, Subpart B, refers to the Program Statement **Administrative Remedy Program**.

The SRO refers to the individual at each Bureau institution assigned to review the status of each inmate housed in disciplinary segregation and administrative detention. The SRO must conduct the required reviews. The SRO does not have to be a DHO. Ordinarily, the SRO is the Captain (may be delegated to a Lieutenant responsible for supervision of the SHU). This review must include:

- A review of the inmate's records while in the SHU (Special Housing Unit Record, BP-A0292).
- All available memoranda from staff (including psychology staff).

- All available investigatory memoranda.
- The SRO completes a Special Housing Review (BP-A0295) after review of the Special Housing Unit Record and other relevant documentation. Maintain permanent logs.

A multidisciplinary team that includes, at a minimum, institution executive staff, Correctional Services, unit staff, Health Services, and psychology staff reviews the inmate's initial and ongoing placement in SHU. This committee meets on a regular basis, ordinarily weekly.

8. PROTECTION CASE – PLACEMENT IN ADMINISTRATIVE DETENTION STATUS

§ 541.27 Protection case – placement in Administrative Detention status.

You may be placed in administrative detention status as a protection case in the following circumstances.

- (a) *Victim of inmate assault or threats.* You were the victim of an inmate assault, or are being threatened by other inmates, including threats of harm if you do not act in a certain way, for example, threats of harm unless you engage in sexual activity.**
- (b) *Inmate informant.* Your safety is threatened because you provided, or are perceived as having provided, information to staff or law enforcement authorities regarding other inmates or persons in the community.**
- (c) *Inmate refusal to enter general population.* You refuse to enter the general population because of alleged pressures or threats from unidentified inmates, or for no expressed reason.**
- (d) *Staff concern.* Based on evidence, staff believe your safety may be seriously jeopardized by placement in the general population.**

When an inmate is placed in Administrative Detention for an investigative period and the threat is verified, correctional officials should seek alternative housing, by transferring the threatened inmate either to the general population of another institution or to a special-purpose housing unit for inmates who face similar threats, with conditions comparable to those of the general population.

When the inmate poses such security risk that even a special-purpose housing unit is insufficient to ensure the inmate's safety and the safety of staff, other inmates, and the public, the inmate

may be housed in more restrictive conditions. The inmate's placement should be regularly reviewed to monitor any medical or mental health deterioration and to determine whether the security risks have subsided.

9. PROTECTION CASE – REVIEW OF PLACEMENT IN THE SHU

§ 541.28 Protection case – review of placement in the SHU.

(a) *Staff investigation.* Whenever you are placed in the SHU as a protection case, whether requested by you or staff, an investigation will occur to verify the reasons for your placement.

(b) *Hearing.* You will receive a hearing according to the procedural requirements of § 541.26(b) within seven calendar days of your placement. Additionally, if you feel at any time your placement in the SHU as a protection case is unnecessary, you may request a hearing under this section.

(c) *Periodic review.* If you remain in administrative detention status following such a hearing, you will be periodically reviewed as an ordinary administrative detention case under § 541.26.

When an inmate is placed in administrative detention for protection, the Warden or designee (ordinarily the Captain), must review the placement within two work days of the placement to determine if continued protective custody is necessary. This review includes documents that led to the inmate being placed in protective custody status and any other documents pertinent to the inmate's protection.

10. STAFF VERIFICATION OF NEED FOR PROTECTION

§ 541.29 Staff verification of need for protection.

If a staff investigation verifies your need for placement in the SHU as a protection case, you may remain in the SHU or be transferred to another institution where your status as a protection case may not be necessary, at the Warden's discretion.

11. LACK OF VERIFICATION OF NEED FOR PROTECTION

§ 541.30 Lack of verification of need for protection.

If a staff investigation fails to verify your need for placement in the SHU as a protection case, you will be instructed to return to the general population. If you refuse to return to the general population under these circumstances, you may be subject to disciplinary action.

Inmates refusing placement in general population should be maintained in Administrative Detention status and, if appropriate, initiate disciplinary action.

12. CONDITIONS OF CONFINEMENT IN THE SHU

§ 541.31 Conditions of confinement in the SHU.

Your living conditions in the SHU will meet or exceed standards for healthy and humane treatment, including, but not limited to, the following specific conditions:

- (a) *Environment.* Your living quarters will be well-ventilated, adequately lighted, appropriately heated, and maintained in a sanitary condition.
- (b) *Cell Occupancy.* Your living quarters will ordinarily house only the amount of occupants for which it is designed. The Warden, however, may authorize more occupants so long as adequate standards can be maintained.
- (c) *Clothing.* You will receive adequate institution clothing, including footwear, while housed in the SHU. You will be provided necessary opportunities to exchange clothing and/or have it washed.

The Warden's written approval is required prior to placing an inmate on alternate clothing/linen status. The Warden or Acting Warden may not delegate the authority to place an inmate in alternate clothing/linen (e.g., paper). The memorandum must include, at a minimum, the signature of the Warden, Health Services Administrator, and a psychologist. A written explanation of the reason(s) for alternate clothing/linen status must be included in the Warden's authorization. This status will be reviewed every 3 days. Inmates will not be authorized to remain in alternate clothing/linen for more than 6 days. After 6 days, the inmate is removed from the alternate clothing/linen status, or, if necessary, a new authorization is generated. Inmates must be offered a change of clothing daily and the clothing must be adequate to the temperature in the SHU.

Alternate clothing/linen is authorized when an inmate alters, destroys, or uses a clothing/linen issued article in a manner that poses a threat to safety, security, or good order of the SHU or to herself/himself, other inmates, or staff.

Alternate clothing/linen will not be used as punishment or during external transportation (i.e., outside the secure perimeter). Inmates that originate from BOP facilities will not be transported in alternate clothing for any reason. Ordinarily, inmates with serious mental illness and those with identified chronic or acute suicide risk are not placed in paper clothing. Paper clothing is not used on suicide watch.

(d) *Bedding.* You will receive a mattress, blankets, a pillow, and linens for sleeping. You will receive necessary opportunities to exchange linens.

If the institution issues the combination mattress with a pillow incorporated, a separate pillow will not be issued. Staff may remove an inmate's mattress during non-sleeping daytime hours as a "loss of privilege" sanction imposed by the Unit Discipline Committee (UDC)/DHO. Removal of an inmate's mattress is otherwise prohibited, absent life or safety concerns as specifically documented and authorized by the Warden, or his/her designee.

(e) *Food.* You will receive nutritionally adequate meals.

Refer to the Program Statement **Food Service Manual** for standards and guidelines for feeding inmates in Special Housing Units. When an inmate uses food products, Food Service items, or the feeding process itself in a manner that poses a threat to the safety, security, or good order of the institution, or to the inmate him-/herself, other inmates, or staff, a written explanation of the reason(s) for alternate meal status must be included in the CEO's authorization and approved by Health Services. The Warden's written approval is required prior to placing an inmate on alternative meal status. After 7 days, the inmate is removed from the alternative meal service or, if necessary, a new authorization is generated.

(f) *Personal hygiene.* You will have access to a wash basin and toilet. You will receive personal items necessary to maintain an acceptable level of personal hygiene, for example, toilet tissue, soap, toothbrush and cleanser, shaving utensils, etc. You will ordinarily have an opportunity to shower and shave at least three times per week. You will have access to hair care services as necessary.

(g) *Exercise.* You will receive the opportunity to exercise outside your individual quarters at least five hours per week, ordinarily on different days in

one-hour periods. You can be denied these exercise periods for a week at a time by order of the Warden if it is determined that your use of exercise privileges threatens safety, security, and orderly operation of a correctional facility, or public safety.

If weather, resources, and staffing permit, the inmate shall receive outdoor exercise periods. "Week" means one calendar week.

Plans for increasing recreation time are developed locally for each institution in an effort to provide additional out of cell time. These plans will be developed considering the views and input from the local union.

The following factors must be considered when developing plans to increase out of cell time for recreation:

- Inmate to correctional services staff ratio in SHU.
- Total number of inmates in SHU.
- Limitations of the physical plant and infrastructure, especially regarding spaces used for recreation.

When an institution possesses the resources identified within the three factors listed above to implement these plans, it should do so.

A memorandum for the plan will be generated. The Warden will review the plan at least annually and make adjustments as necessary.

Restriction or denial of exercise is not used as punishment. The Warden or Acting Warden may not delegate the authority to restrict or deny exercise. Exercise periods are only restricted or denied when the inmate's activities pose a threat to the safety, security, and orderly operation of a correctional facility, or health conditions of the unit.

The appropriate staff member recommends recreation restrictions to a supervisor who then makes the recommendation to the Warden in writing. The recommending staff member describes briefly the reason for recommending a restriction and its proposed extent. The Warden reviews the recommendation and approves, modifies, or denies the restriction. If the Warden approves a restriction, it must be based on the conclusion that the inmate's actions pose a threat to the safety, security, and orderly operation of a correctional facility or health conditions of the unit.

(h) **Personal property.** In either status, your amount of personal property may be limited for reasons of fire safety or sanitation.

(1) In administrative detention status you are ordinarily allowed a reasonable amount of personal property and reasonable access to the commissary.

(2) In disciplinary segregation status your personal property will be impounded, with the exception of limited reading/writing materials, and religious articles. Also, your commissary privileges may be limited.

(3) Personal property ordinarily allowed in administrative detention (if not otherwise a threat to institution security) includes:

- Bible, Koran, or other scriptures (1).
- Books, paperback (5).
- Eyeglasses, prescription (2).
- Legal material (see the Program Statement **Inmate Legal Activities**).
- Magazine (3).
- Mail (10).
- Newspaper (1).
- Personal hygiene items (1 of each type) (no dental floss or razors*).
- Photographs (25).
- Authorized religious medals/headgear (e.g., kufi).
- Shoes, shower (1).
- Shoes, other (1).
- Snack foods without aluminum foil wrappers (5 individual packs).
- Soft drinks, powdered (1 container).
- Stationery/stamps (20 each).
- Wedding band (1).
- Radio with ear plugs (1).
- Watch (must not have metal backing) (1).

*Razors are controlled by SHU staff. Only disposable razors are used.

The Warden may modify the quantity and type of personal property allowed. Personal property may be limited or withheld for reasons of security, fire safety, or housekeeping.

Unauthorized use of any authorized item may result in the restriction of the item. If there are numerous misuses of an authorized item, the Warden may determine that the item will not be issued in the SHU.

Reading Material. The inmate will receive a reasonable amount of non-legal reading material, not to exceed five books per inmate at any one time, on a circulating basis. Staff shall provide the inmate the opportunity to possess religious scriptures of the inmate's faith.

(i) Correspondence. You will receive correspondence privileges according to part 540, subpart B.

Part 540, Subpart B, refers to the Program Statement **Correspondence**.

(j) Telephone. You will receive telephone privileges according to part 540, subpart I.

Part 540, Subpart I, refers to the Program Statement **Inmate Telephone Regulations**.

If the inmate has not been restricted from telephone use as the result of a specific disciplinary sanction, he/she is allowed to make one telephone call per month. Meaning, the inmate should receive a phone call within the first 30 calendar days of placement in the Special Housing Unit and within every 30 calendar days thereafter.

(k) Visiting. You will receive visiting privileges according to part 540, subpart D.

Part 540, Subpart D, refers to the Program Statement **Visiting Regulations**.

(l) Legal activities. You will receive an opportunity to perform personal legal activities according to part 543, subpart B.

Part 543, Subpart B, refers to the Program Statement **Inmate Legal Activities**.

(m) Staff monitoring. You will be monitored by staff assigned to the SHU, including program and unit team staff.

Program staff, including unit staff, arrange to visit inmates in a SHU within a reasonable time after receiving the inmate's request.

In addition to direct supervision by the unit officer, qualified health personnel and one or more responsible officers the Warden designates (ordinarily the Institution Duty Officer) visit each segregated inmate daily, including weekends and holidays. A Lieutenant must visit the SHU during each shift to ensure all procedures are followed.

Duress buttons, if present, will be utilized only for emergency and/or life-threatening situations, to include health-related issues. The use of the duress button for anything other than an emergency and/or life-threatening situation is subject to disciplinary action.

(n) *Programming activities.* In administrative detention status, you will have access to programming activities to the extent safety, security, orderly operation of a correctional facility, or public safety are not jeopardized. In disciplinary segregation status, your participation in programming activities, e.g., educational programs, may be suspended.

All out of cell time will be recorded in BP-A0292, Special Housing Unit Record.

(o) *Administrative Remedy Program.* You can submit a formal grievance challenging any aspect of your confinement in the SHU through the Administrative Remedy Program, 28 CFR part 542, subpart B.

28 CFR Part 542, Subpart B, refers to the Program Statement **Administrative Remedy Program**.

13. MEDICAL AND MENTAL HEALTH CARE IN THE SHU

§ 541.32 Medical and mental health care in the SHU.

(a) *Medical care.* A health services staff member will visit you daily to provide necessary medical care. Emergency medical care is always available.

While in a SHU, inmates may continue taking their prescribed medications.

(b) *Mental health care.* After every 30 calendar days of continuous placement in either administrative detention or disciplinary segregation status, mental health staff will examine you, including a personal interview. Emergency mental health care is always available.

Generally, an inmate who has been identified by Psychology/Health Services as a Care-3 (MH), Care-4 (MH), psychology alert in SENTRY, or identified on the monthly SHU advisory should not be placed in Special Housing unless he/she presents an immediate and/or serious danger to self, staff, or the orderly running of a facility.

If an inmate who has been identified by Psychology/Health Services as a Care-3 (MH), Care-4 (MH), psychology alert in SENTRY, or identified on the monthly SHU advisory (Hot List), is placed in Special Housing, psychology services should be notified and conduct a mental health

evaluation within 24 hours of placement. Staff should conduct a psychiatric or psychological assessment, including a personal interview, when administrative detention continues beyond 30 days. The assessment, submitted to the SRO in a written report with a copy to the inmate's central file, addresses:

- The inmate's adjustment to surroundings.
- The threat the inmate poses to self, staff, and other inmates.

Staff conduct a similar psychiatric or psychological assessment and report at 30-day intervals should detention continue for an extended period.

14. **RELEASE FROM THE SHU**

§ 541.33 Release from the SHU.

(a) *Administrative detention status.* You will be released from administrative detention status when the reasons for your placement no longer exist.

(b) *Disciplinary segregation status.* You will be released from disciplinary segregation status after satisfying the sanction imposed by the DHO. The SRO may release you earlier if it is determined you no longer require disciplinary segregation status.

Ordinarily, inmates nearing the end of their term of incarceration will not be placed in SHU, except when their presence in General Population threatens the safety, security, or the orderly running of a BOP facility.

Every effort should be made to avoid releasing an inmate directly from SHU to the community. If the inmate remains in SHU within 180 days of release, options to release the inmate to less restrictive settings should be considered. If a less restrictive setting is not possible, the inmate will receive targeted reentry programming to prepare for return to the community.

A clear plan for returning the inmate to less restrictive conditions will be developed and is ordinarily shared with the inmate.

The SRO may not increase any previously imposed sanction(s). When considering release from disciplinary segregation, the SRO first consults with the Captain and must notify the Discipline Hearing Officer (DHO) of the inmate's release from disciplinary segregation before satisfying the imposed sanction.

15. TRAINING

Completion of quarterly training will be required for staff assigned to SHU prior to the start of each new quarter, regardless of how many times a staff member has completed the training. When assignment to a SHU post is known sufficiently in advance, each staff member should be afforded a reasonable amount of duty time to complete the training. For instances when last-minute assignments to the SHU occur, the employer must advise the staff of the general requirements of a SHU post and answer any questions.

This training session may include, but is not limited to, search procedures, escort procedures, application of restraints, use of force, orderly supervision, cell/unit sanitation, emergency response, suicide prevention, and dealing with mentally ill inmates, as well as other security procedures related to the unit. If this in-person training is completed, a training sheet will be completed documenting the training, and will be routed to the Captain and Human Resources Department for retention.

16. AGENCY'S ACA ACCREDITATION PROVISIONS

- 4th Edition Standards for Adult Correctional Institutions: 4-4133, 4-4235, 4-4249, 4-4250, 4-4251, 4-4252, 4-4253, 4-4254, 4-4255, 4-4256, 4-4258, 4-4260, 4-4261, 4-4262, 4-4263, 4-4264, 4-4265, 4-4266, 4-4267, 4-4268, 4-4269, 4-4270, 4-4271, 4-4272, and 4-4273.
- 4th Edition Performance-Based Standards for Adult Local Detention Facilities: 4-ALDF-2A-44, 4-ALDF-2A-45, 4-ALDF-2A-46, 4-ALDF-2A-47, 4-ALDF-2A-48, 4-ALDF-2A-49, 4-ALDF-2A-50, 4-ALDF-2A-51, 4-ALDF-2A-53, 4-ALDF-2A-55, 4-ALDF-2A-56, 4-ALDF-2A-57, 4-ALDF-2A-58, 4-ALDF-2A-59, 4-ALDF-2A-60, 4-ALDF-2A-61, 4-ALDF-2A-62, 4-ALDF-2A-63, 4-ALDF-2A-64, 4-ALDF-2A-65, and 4-ALDF-2A-66.

REFERENCES

Program Statements

P1315.07	Inmate Legal Activities (11/5/99)
P1330.18	Administrative Remedy Program (1/6/14)
P4700.06	Food Service Manual (9/3/11)
P5100.08	Inmate Security Designation and Custody Classification (9/12/06)
P5212.07	Control Unit Programs (2/20/01)
P5264.08	Inmate Telephone Regulations (1/24/08)
P5265.14	Correspondence (4/5/11)
P5267.09	Visiting Regulations (12/10/15)
P5270.09	Inmate Discipline Program (7/8/11)
P6031.04	Patient Care (6/3/14)
P5270.11	11/23/2016 Federal Regulations are shown in this type. Implementing instructions: this type.

P6340.04 Psychiatric Services (1/15/05)
P6360.01 Pharmacy Services (1/15/05)

BOP Forms

BP-A0292 Special Housing Unit Record
BP-A0295 Special Housing Review
BP-A0308 Administrative Detention Order
BP-A0321 Special Housing Unit – Temporary Restrictive Housing Order

Records Retention Requirements

Requirements and retention guidance for records and information applicable to this program are available in the Records and Information Disposition Schedule (RIDS) on Sallyport.



U.S. Department of Justice
Federal Bureau of Prisons

PROGRAM STATEMENT

OPI: CPD/CSB

NUMBER: 5521.06

DATE: June 4, 2015

RULES EFFECTIVE: July 6, 2015

Searches of Housing Units, Inmates, and Inmate Work Areas

/s/

Approved: Charles E. Samuels, Jr.
Director, Federal Bureau of Prisons

1. PURPOSE AND SCOPE

§552.10 Purpose and scope.

In order to further the safe, secure, and orderly running of its institutions, the Bureau of Prisons conducts searches of inmates and of inmate housing and work areas to locate contraband and to deter its introduction and movement. Staff shall employ the least intrusive method of search practicable, as indicated by the type of contraband and the method of suspected introduction.

Non-intrusive sensors should be used whenever feasible. When searches are required, staff shall avoid unnecessary force and strive to preserve the dignity of the individual being searched.

a. Summary of Changes

Policy Rescinded

P5521.05 Searches of Housing Units, Inmates, and Inmate Work Areas (06/30/97)

- Included updated regulation language concerning electronic searches and x-rays.

Federal Regulations from 28 CFR are shown in this type.

Implementing instructions are shown in this type.

- Added language clarifying cross-gender use of electronic search equipment.
- Added language concerning cross-gender pat searches of female offenders.
- Added language concerning pat searches of transgender inmates.

b. **Program Objectives.** The expected results of this program are:

- Inmates will live and work in a safe and orderly environment.
- Human Resources Office responsibilities will be clearly defined.
- Searches of inmates and housing and work areas will be conducted without unnecessary force and in ways that, insofar as is practical, preserve the dignity of inmates.

c. **Institution Supplement.** None required. Should local facilities make any changes outside the required changes in the national policy or establish any additional local procedures to implement the national policy, the local Union may invoke to negotiate procedures or appropriate arrangements.

d. **Pretrial/Holdover Procedures.** Procedures required in this Program Statement are applicable to pretrial and holdover inmates.

2. SEARCHES OF INMATES

§ 552.11 Searches of inmates.

a. *Electronic devices.* Inspection of an inmate's person using electronic devices (for example, metal detector, ion spectrometry device, or body imaging search device) does not require the inmate to remove clothing. The inspection may also include a search of the inmate's clothing and personal effects. Staff may conduct an electronic device search of an inmate on a routine or random basis to control contraband.

Cross-gender staff may operate electronic devices revealing body contours if appropriate filters are used.

b. *Pat search.* An inspection of an inmate using the hands does not require the inmate to remove clothing. The inspection includes a search of the inmate's clothing and personal effects. Staff may conduct a pat search of an inmate on a routine or random basis to control contraband.

The Warden may install metal detection devices within the institution as necessary for the control of contraband. A metal detector search may be done in addition to the pat search.

Any pat search shall be conducted as outlined in the Program Statement **Correctional Services Manual**.

(1) **Female Inmates.** According to the Prison Rape Elimination Act (PREA) Standards for Adult Prisons and Jails, Title 28 C.F.R. § 115.15(b), cross-gender pat-down searches of female inmates are not permitted, absent exigent circumstances. As a result, male staff are not permitted to pat-search female inmates, unless exigent circumstances exist.

Cross-gender pat searches of female inmates are permitted if exigent circumstances exist. The PREA regulations, Title 28 C.F.R. § 115.5, define “exigent circumstances” as “any set of temporary and unforeseen circumstances that require immediate action in order to combat a threat to the security or institutional order of a facility.”

Staff of the same sex as the inmate shall make the search, except where circumstances are such that delay would constitute an immediate threat to the inmate, staff, others, property, or institution security. Other options, such as detaining the inmate until a female staff member arrives if feasible, should be considered before a cross-gender pat search is conducted.

A memorandum will be prepared documenting a cross-gender pat search of a female inmate by a male staff member, which will be submitted to the Lieutenants’ Office and forwarded to the PREA Compliance Manager. All cross-gender pat searches of a female inmate by a male staff member must be reported to protect staff from unfounded allegations. The memorandum must establish the identity of all involved in the pat search; i.e., inmates, staff, and others; and the circumstances giving rise to the search.

Random pat searches remain a primary security and management tool for the detection of contraband. Electronic devices will be used to supplement these efforts, as negotiated locally, taking population size, security level, facility mission, etc., into account; however, electronic searches are not substitutes for pat searches.

Post assignments may not be restricted on the basis of gender. Institutions will evaluate operational concerns consistent with collective bargaining obligations, the Master Agreement, and other laws, rules, and regulations. The agency will continue to comply with Title VII and other Equal Employment Opportunity Commission authorities in implementing this policy.

(2) **Transgender Inmates.** For purposes of pat searching, inmates will be pat-searched in accordance with the gender of the institution, or housing assignment, in which they are assigned. Transgender inmates may request an exception. The exception must be pre-authorized by the Warden, after consultation with staff from Health Services, Psychology Services, Unit

Management, and Correctional Services. Exceptions must be specifically described (e.g., “pat search only by female staff”), clearly communicated to relevant staff through a memorandum, and reflected in SENTRY (or other Bureau database; e.g., posted picture file). Inmates should be provided a personal identifier (e.g., notation on commissary card, etc.) that indicates their individual exception, to be carried at all times and presented to staff prior to pat searches.

(3) **Conducting Pat Searches.** Staff are trained how to conduct pat searches during Introduction to Correctional Techniques, Annual Training, a Sallyport video titled “Inmate Pat Search,” and written policy.

c. Visual search. A visual inspection of all body surfaces and body cavities.

Any visual search shall be conducted and documented in the appropriate visual search log book, as outlined in the Program Statement **Correctional Services Manual**.

(1) Staff may conduct a visual search where there is reasonable belief that contraband may be concealed on the person, or a good opportunity for concealment has occurred. For example, placement in a special housing unit (see 28 CFR 541, subpart B), leaving the institution, or re-entry into an institution after contact with the public (after a community trip, court transfer, or after a “contact” visit in a visiting room) is sufficient to justify a visual search. The visual search shall be made in a manner designed to assure as much privacy to the inmate as practicable.

28 CFR 541, subpart B, refers to the Program Statement **Special Housing Units**. Except in minimum security institutions, inmates must undergo a visual search when leaving the institution, for whatever reason (even when being released). Examples of other situations requiring visual searches include:

- Processing an inmate into an institution through Receiving and Discharge.
- Placing an inmate in the Control Unit.
- Conducting periodic visual searches of inmates returning from outside work details.

(2) Staff of the same sex as the inmate shall make the search, except where circumstances are such that delay would mean the likely loss of contraband. Where staff of the opposite sex makes a visual search, staff shall document the reasons for the opposite sex search in the inmate’s central file.

While post assignments may not be restricted on the basis of sex, a staff member may not perform routine visual searches of inmates of the opposite sex, such as could be required by assignment to such posts as the visiting room and receiving and discharge units.

d. *Digital or simple instrument search.* Inspection for contraband or any other foreign item in a body cavity of an inmate by use of fingers or simple instruments, such as an otoscope, tongue blade, short nasal speculum, and simple forceps. A digital or simple instrument search may be conducted only by designated qualified health personnel (for example, physicians, physician assistants, and nurses) upon approval of the Warden or Acting Warden and only if the Warden or Acting Warden has reasonable belief that an inmate is concealing contraband in or on his person. If located, the contraband or foreign item may be removed immediately by medical staff if such removal can easily be effected by use of fingers or the simple instruments referred to above.

Staff shall document all digital and simple instrument searches and the reasons for the searches in the inmate's central file.

Persons of the opposite sex from the inmate may not observe the digital or simple instrument search.

To document the search staff shall use the Search for Contraband: Digital, Simple Instrument, X-Ray Examination form (BP-A0313).

(1) Staff shall solicit the inmate's written consent prior to conducting a digital or simple instrument search. However, the inmate's consent is not required.

(2) Staff may not conduct a digital or simple instrument search if it is likely to result in physical injury to the inmate.

3. CLOSE OBSERVATION ("DRY CELL" STATUS)

§552.12 Close observation.

When there is reasonable belief that an inmate has ingested contraband or concealed contraband in a body cavity and the methods of search specified in §552.11 are inappropriate or likely to result in physical injury to the inmate, the Warden or designee may authorize the placement of an inmate in a room or cell for the purpose of staff's closely observing that inmate until the inmate has

voided the contraband or until sufficient time has elapsed to preclude the possibility that the inmate is concealing contraband.

Such placement is commonly referred to as “dry cell” status. Section 552.11 refers to Section 2 of this Program Statement.

- **Regular duty hours.** The Warden or designee may authorize dry cell status.
- **Other times.** The Warden’s designee, ordinarily the Operations Lieutenant, in consultation with the Duty Officer and Administrative Duty Officer, may authorize dry cell status.

Dry cell status is often appropriate when staff believe an inmate has ingested contraband. Ordinarily, when staff believe that a female inmate has concealed contraband in her vagina, dry cell status is not the appropriate search method, since it is possible for her to thus conceal contraband for an extended period of time.

Ordinarily, an inmate of either gender will not be able to conceal contraband in his/her anal cavity for an extended period of time.

a. The length of close observation status will be determined on an individual basis. Ordinarily, the Captain, in consultation with qualified health personnel, shall determine when termination is appropriate. The status of an inmate under close observation for as long as three days must be reviewed by the Segregation Review Official according to the provisions in §541.22(c) of this chapter, and the initial SRO review conducted within three work days shall be a formal hearing. Maintaining an inmate under close observation beyond seven days requires approval of the Warden, who makes this decision in consultation with the Captain and qualified health personnel.

Section 541.22 (c) refers to Section 4 of the Program Statement **Special Housing Units**. That section, which applies to review of inmates housed in administrative detention, requires that the SRO conduct a record review within three work days; however, **for an inmate in dry cell status**, a formal in-person hearing is required.

Since it is unlikely that the objective of dry cell status will not be achieved within seven days, prior approval of the Warden, in consultation with the Captain and appropriate medical staff, is required to continue dry cell status beyond seven days.

b. The supervising staff member shall be the same sex as the inmate and shall maintain complete and constant visual supervision of the inmate.

The inmate shall never be allowed freedom to move around unsupervised, or be given the opportunity to dispose of any objects he/she may be concealing.

- (1) The supervising staff member shall be issued a portable radio and flashlight.
- (2) A daily log and Special Housing Unit Record shall be maintained on each inmate in dry cell status.
- (3) Watch calls shall be made by radio.
- (4) The Lieutenant shall ensure staff have reviewed the Post Orders prior to assuming the post. If it is necessary for the staff member to leave the area, the Operations Lieutenant shall provide a relief person. The Operations Lieutenant shall brief that person of his/her responsibilities. The inmate must not be left unattended during the relief period.
- (5) Trash may not be allowed to accumulate, and each item shall be thoroughly searched before disposal.
- (6) The inmate is to be given a visual search prior to placement in the room and issued a jump suit (or other suitable loose-fitting clothing). The inmate is to be given a visual search and the inmate's living area must be thoroughly searched at least once each shift, being careful not to set a pattern. Prior to each search, the Operations Lieutenant must be notified and a second person provided for inmate supervision.
- (7) Staff shall notify the Operations Lieutenant when contraband is found. The staff member shall secure the contraband in a plastic evidence bag, and proper documentation and chain of evidence shall be maintained.

c. The supervisor responsible for initiating the close observation watch shall advise the inmate of the conditions and of what is expected.

Documentation of this notification is to be made through the Administrative Detention Order form (BP-A0308).

(1) The inmate shall be required to provide a urine sample within two hours of placement under close observation in accordance with the provisions of §550.30 of this chapter on urine surveillance. A second urine sample is required prior to releasing the inmate from close observation.

§ 550.30 of this chapter refers to the Program Statement **Urine Surveillance and Narcotic Identification**.

(2) The light will be kept on at all times.

(3) No inmate under close observation status may be allowed to come into contact with another inmate.

(4) The inmate ordinarily may not be allowed personal property while under close observation status, except legal and personal mail and a reasonable amount of legal materials when requested. Personal hygiene items will be controlled by staff.

(5) When the inmate is lying on a bed, the inmate shall be required to lie on top of the mattress in full view, weather and room temperature permitting. When necessary for the inmate to use cover, hands must remain visible at all times so that staff can observe any attempt to move contraband.

An inmate might attempt to remove and/or insert contraband from or into a body cavity, so it is important to constantly observe his/her hands.

(6) Due to security concerns, the inmate ordinarily may not be permitted recreation outside of the cell.

(7) The inmate is to be served the same meals as those served to the general population unless medically contraindicated.

All meals are to be inspected for contraband prior to delivery to the inmate. Any food remaining after the meal, as well as the utensils and tray, are to be thoroughly inspected before being sent back to Food Service.

(8) No medications may be given to the inmate except for those prescribed and given by hospital personnel. No laxatives may be given except natural laxatives, i.e., coffee, prune juice, etc.

(9) When the inmate needs to urinate and/or defecate, the inmate will be furnished an empty hospital bed pan.

Staff supervising the inmate shall notify the Operations Lieutenant, who shall furnish a second staff member for supervision. Using rubber gloves and forceps or a tongue depressor, staff shall closely inspect the results to ascertain whether any contraband is present.

(10) When the inmate requests to shave, to brush teeth, or other such request, a wash pan and container of water is to be provided for use in the cell.

(11) Institution staff shall be available to the inmate upon request, within reason and within the bounds of security concerns.

d. Each Captain shall develop Post Orders providing guidance to staff supervising an inmate on dry cell status. Consideration should be given to the use of video camera during the dry cell status.

e. Any questions, emergency, or other situation that arises shall immediately be brought to the attention of the Operations Lieutenant. It is the supervising employee's responsibility to ensure the inmate does not dispose of any concealed item, or to allow an activity that would allow the inmate access to it, thereby jeopardizing the security and good order of the institution, staff, and inmates.

f. It is recommended that one or more rooms or cells be identified as dry cells that meet the following requirements:

- The room should be free of hiding places and be equipped with only a bed.
- Doors should have proper observation panels to protect staff and to allow unobstructed observation.
- Windows in the dry cell should have a security screen to prevent loss of contraband.
- If the designated area is equipped with a toilet and/or sink, the water to the cell should be shut off, and removed prior to the inmate's being allowed into the room. The water should remain off for the duration of the dry cell process.
- Prior to placement of an inmate in dry cell status, the room to be used should be completely searched and determined to be free of contraband. Potential hiding places, if any, for the contraband should be noted.

4. MEDICAL X-RAY DEVICE, MAJOR INSTRUMENT, OR SURGICAL INTRUSION

§ 552.13 Medical x-ray device, major instrument, or surgical intrusion.

a. The institution physician may authorize use of a major instrument (including anoscope or vaginal speculum) or surgical intrusion for medical reasons only, with the inmate's consent.

The use of a fluoroscope, major instrument, or surgical intrusion may be authorized only for medical reasons. The inmate's consent is needed prior to this use.

b. The institution physician may authorize use of a medical x-ray device for medical reasons and only with the consent of the inmate. When there exists no reasonable alternative, and an examination using a medical x-ray device is determined necessary for the security, good order, or discipline of the institution, the Warden, upon approval of the Regional Director, may authorize the institution physician to order a non-repetitive examination using a medical x-ray device for the purpose of determining if contraband is concealed in or on the inmate (for example: in a cast or body cavity). The examination using a medical x-ray device may not be performed if it is determined by the institution physician that it is likely to result in serious or lasting medical injury or harm to the inmate. Staff shall place documentation of the examination and the reasons for the examination in the inmate's central file and medical file.

For purposes of this rule, theoretical harm that might result from a single X-ray exposure does not constitute a situation likely to result in serious or lasting medical injury or harm to the inmate.

(1) The Warden and Regional Director or persons officially acting in that capacity may not redelegate the authority to approve an examination using medical x-ray device for the purpose of determining if contraband is present. An Acting Warden or Acting Regional Director may, however, perform this function.

When the case requires the Warden's approval, and the situation occurs when neither the Warden or Acting Warden is available, the Institution Duty Officer or Administrative Duty Officer should be contacted. Upon determining that an X-ray examination appears warranted, the Duty Officer is to contact the Regional Director or Acting Regional Director for an approval to conduct the examination.

A copy of the completed BP-A0313 shall be forwarded to the Regional Director who authorized the search.

(2) Staff shall solicit the inmate's consent prior to an examination using a medical x-ray device. However, the inmate's consent is not required.

c. The Warden may direct searches of inanimate objects using a medical x-ray device where the inmate is not exposed.

When the case requires the Warden's approval, and the situation occurs when the Warden is not available, this function may be performed by the Acting Warden, Institution Duty Officer, or Administrative Duty Officer. The authority is not delegated to any other staff member.

Procedures for disposition of contraband found shall be developed locally and in accordance with the FBI and U.S. Attorney requirements for possible prosecution.

5. SEARCH OF INMATE HOUSING AND WORK AREAS

§552.14 Search of inmate housing and work areas.

a. Staff may search an inmate's housing and work area, and personal items contained within those areas, without notice to or prior approval from the inmate and without the inmate's presence.

Searches of housing units and of work areas shall be completed as outlined in the Program Statement **Correctional Services Manual**. Each institution shall establish procedures to ensure all housing units and work areas are **searched routinely, but irregularly**, since such inspections are primarily designed to:

- Detect contraband.
- Prevent escapes.
- Maintain sanitary standards.
- Eliminate fire and safety hazards.

When there is a question of legitimacy of some religious article, the Chaplain should be consulted.

Staff shall maintain written documentation of each housing unit search within the individual housing unit. Work areas (including industries) shall be searched each work day by shop supervisors, and these inspections shall be supplemented with periodic searches by regular

search teams. Documentation of daily searches is not required; however, these should be informally monitored to ensure compliance. The Captain shall maintain documentation of search team inspections.

b. Staff conducting the search shall leave the housing or work area as nearly as practicable in its original order.

6. AGENCY ACA ACCREDITATION PROVISIONS

(See the Program Statement **Directives Management Manual**, Section 2.5 & 10.3.)

- American Correctional Association 4th Edition Standards for Adult Correctional Institutions: 4-4192, 4-4193, 4-194, 4-4282.
- American Correctional Association 4th Edition Standards for Adult Local Detention Facilities: 4-ALDF-6C-19, 4-ALDF-2C-01, 4-ALDF-2C-01, 4-ADLF-2C-05, 4-ALDF-2C-03.
- American Correctional Association, 2nd Edition Standards for the Administration of Correctional Agencies: 2-CO-3A-01.

REFERENCES

Program Statements

P5270.10 Special Housing Units (7/29/11)
P5500.11 Correctional Services Manual (3/31/15)
P6060.08 Urine Surveillance and Narcotic Identification (3/8/01)

Federal Regulations

Rules cited in this Program Statement are contained in 28 CFR §§ 552.10 through 552.14.

BOP Forms

BP-A0308 Administrative Detention Order
BP-A0313 Search for Contraband: Digital, Simple Instrument, X-Ray Examination

Records Retention Requirements

Requirements and retention guidance for records and information applicable to this program are available in the Records and Information Disposition Schedule (RIDS) on Sallyport.



U.S. Department of Justice
Federal Bureau of Prisons

PROGRAM STATEMENT

OPI: CPD/CSB
NUMBER: 5270.09
DATE: July 8, 2011
EFFECTIVE DATE: August 1, 2011

Inmate Discipline Program

/s/

Approved: Thomas R. Kane
Acting Director, Federal Bureau of Prisons

1. PURPOSE AND SCOPE

§ 541.1 Purpose.

This subpart describes the Federal Bureau of Prisons' (Bureau) inmate discipline program. This program helps ensure the safety, security, and orderly operation of correctional facilities, and the protection of the public, by allowing Bureau staff to impose sanctions on inmates who commit prohibited acts. Sanctions will not be imposed in a capricious or retaliatory manner. The Bureau's inmate discipline program is authorized by 18 U.S.C. 4042(a)(3).

§ 541.2 Application.

This program applies to sentenced and unsentenced inmates in Bureau custody. It also applies to sentenced and unsentenced inmates designated to any prison, institution, or facility in which persons are held in custody by direction of, or under an agreement with, the Bureau of Prisons.

This policy applies to all persons in the custody of the Federal Bureau of Prisons or Bureau contract facilities, including persons charged with or convicted of offenses against the United States; D.C. Code felony offenders; and persons held as witnesses, detainees, or otherwise. These provisions do not apply to Federal inmates designated to a non-Federal facility (e.g., inmates serving Federal sentences in state or county facilities).

Federal Regulations from 28 Code of Federal Regulations, part 541, are shown in this type.
Implementing instructions are shown in this type.

2. SUMMARY OF CHANGES

- a. Establish Greatest and High severity level prohibited acts for sexual assault of any person. The Greatest severity level act (114) requires the use or threat of force. The High severity level act (229) is for incidents without the use or threat of force.
- b. Increase the severity level of escapes from non-secure facilities from a High to a Greatest severity level prohibited act.
- c. Amend the Code 104 to include any instrument used as a weapon.
- d. Establish a Code 115 for destroying and/or disposing of any item during a search or attempt to search.
- e. Establish a High severity level prohibited act code for escape from a work detail, a non-secure institution, or other non-secure custody, including a community facility, with subsequent voluntary return to custody within four hours.
- f. Clarify possession of a cellular telephone or other electronic communications device is a Greatest severity level prohibited act.
- g. Increase the severity level of all alcohol-related offenses from a High to a Greatest severity level prohibited act.
- h. Establish a High severity level prohibited act code for stalking.
- i. Establish a High severity level prohibited act code for possession of stolen property.
- j. Establish a Moderate severity level prohibited act code for circulating a petition.
- k. Establish a High severity level prohibited act code for refusing to participate in a required physical test or examination unrelated to testing for drug abuse (e.g., DNA, HIV, TB).
- l. Increase the severity level for tattooing and self-mutilation to a High severity level prohibited act.
- m. Establish a Moderate severity level prohibited act code for the fraudulent or deceptive completion of a skills test.
- n. Increase the severity level for conducting a business to a Moderate severity level prohibited act.
- o. Establish a Moderate severity level prohibited act code for communicating gang affiliation.

- p. Establish Greatest, High, and Moderate severity level prohibited acts for abuse of the mail.
- q. Establish a sanction of monetary fine.
- r. Remove the formal sanctions of reprimand and warning.
- s. Increase the sanction of disciplinary segregation from a range of 7 to 60 days to a range of 1 to 18 months.
- t. Change from three work days to five work days for the UDC to ordinarily conduct a review.
- u. The Special Housing Unit policy (conditions of disciplinary segregation, administrative detention, and protection cases) has been removed and guidance is provided in a separate program statement.

3. **PRINCIPLES**

Several general principles apply to every disciplinary action:

- a. Incident reports can be written by Bureau staff, Federal Prison Industries (FPI) staff, and Public Health Service (PHS) officers detailed to the Bureau. Community Corrections Managers may take disciplinary action on inmates in contract RRC's.
- b. Staff take disciplinary action at such times and to the degree necessary to regulate an inmate's behavior within Bureau rules and institution guidelines and to promote a safe and orderly institution environment.
- c. Staff control inmate behavior in an impartial and consistent manner.
- d. Disciplinary action may not be capricious or retaliatory.
- e. Staff may not impose or allow corporal punishment of any kind.

4. **DIRECTIVES AFFECTED**

a. **Directive Rescinded**

P5270.08 Inmate Discipline and Special Housing Units (12/4/09)

b. **Directives Referenced**

P1315.07 Inmate Legal Activities (11/5/99)
P1330.16 Administrative Remedy Program (12/31/07)

P1505.03	Language Translations Used in Official Documents (10/31/97)
P2000.02	Accounting Management Manual (10/15/86)
P4500.07	Trust Fund/Deposit Fund Manual (4/19/10)
P4700.05	Food Service Manual (6/12/06)
P5100.08	Inmate Security Designation and Custody Classification (9/12/06)
P5162.05	Categorization of Offenses (3/16/09)
P5180.05	Central Inmate Monitoring System (PS Only) (12/31/07)
P5180.06	Central Inmate Monitoring System (Operations Manual Only) (3/24/08)
P5212.07	Control Unit Programs (2/20/01)
P5215.05	Youth Corrections Act (YCA) Inmates and Programs (3/17/99)
P5264.08	Inmate Telephone Regulations (1/24/08)
P5265.14	Correspondence (4/5/11)
P5267.08	Visiting Regulations (5/11/06)
P5270.10	Special Housing Units (8/1/11)
P5322.12	Inmate Classification and Program Review (11/29/06)
P5360.09	Religious Beliefs and Practices (12/31/04)
P5380.08	Financial Responsibility Program, Inmate (8/15/05)
P5500.11	Correctional Services Manual (10/10/03)
P5500.12	Correctional Services Procedures Manual (10/10/03)
P5521.05	Searches of Housing Units, Inmates, and Inmate Work Areas (6/30/97)
P5580.07	Inmate Personal Property (12/28/05)
P5800.15	Correctional Systems Manual (1/1/09)
P5880.28	Sentence Computation Manual (CCCA of 1984) (7/20/99)
P5880.30	Sentence Computation Manual (Old Law, Pre-CCCA of 1984) (9/8/99)
P5880.32	Sentence Computation Manual (District of Columbia) (1/23/01)
P5884.03	Good Conduct Time Under the Prison Litigation Reform Act (3/31/06)
P7300.09	Community Corrections Manual (5/19/99)
P7331.04	Pretrial Inmates (1/31/03)

c. Rules cited in this Program Statement are contained in 28 CFR § 541.2 and §§ 541.10-23.

5. AGENCY ACA ACCREDITATION PROVISIONS

a. American Correctional Association 4th Edition Standards for Adult Correctional Institutions:

4-4226, 4-4227, 4-4228, 4-4229, 4-4230, 4-4231, 4-4232, 4-4233, 4-4234, 4-4235, 4-4236, 4-4237, 4-4238, 4-4239, 4-4240, 4-4241, 4-4242, 4-4243, 4-4244, 4-4245, 4-4246, 4-4247, 4-4248, 4-4255, 4-4399

b. American Correctional Association 4th Edition Performance-Based Standards for Adult Local Detention Facilities:

4-ALDF-2A-47, 4-ALDF-2A-50, 4-ALDF-3A-01, 4-ALDF-3A-02, 4-ALDF-4C-40, 4-ALDF-6C-01, 4-ALDF-6C-02, 4-ALDF-6C-03, 4-ALDF-6C-04, 4-ALDF-6C-05,

4-ALDF-6C-06, 4-ALDF-6C-07, 4-ALDF-6C-08, 4-ALDF-6C-09, 4-ALDF-6C-10, 4-ALDF-6C-11, 4-ALDF-6C-12, 4-ALDF-6C-13, 4-ALDF-6C-14, 4-ALDF-6C-15, 4-ALDF-6C-16, 4-ALDF-6C-17, and 4-ALDF-6C-18.

6. INSTITUTION SUPPLEMENTS

None required.

7. NOTICE TO INMATE OF THE INMATE DISCIPLINE PROGRAM

Staff must give each inmate a copy of the following documents promptly after his/her arrival at an institution:

- Summary of the Inmate Discipline System (Appendix B).
- Inmate Rights and Responsibilities (Appendix C).
- Prohibited Acts and Available Sanctions (Table 1).

Receipt of these documents must be noted on the intake screening form and maintained in the inmate's central file. The receipt is kept in the inmate's central file.

To the extent reasonably available, a qualified staff member or translator will help an inmate who has a language or literacy problem, in accordance with the Program Statement **Language Translations Used in Official Documents**.

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CHAPTER 1.

§ 541.3 Prohibited acts and available sanctions.

(a) **Prohibited acts.** The list of prohibited acts are divided into four separate categories based on severity: Greatest; High; Moderate; and Low. We describe the prohibited acts in Table 1 - Prohibited Acts and Available Sanctions. Aiding, attempting, abetting, or making plans to commit any of the prohibited acts is treated the same as committing the act itself.

(b) **Available sanctions.** The list of available sanctions for committing prohibited acts is listed in Table 1 - Prohibited Acts and Available Sanctions. If you commit repetitive prohibited acts, we can impose increased sanctions, as listed in Table 2 - Additional Available Sanctions for Repeated Prohibited Acts Within the Same Severity Level.

(1) **Greatest Severity Level Offenses.** The Discipline Hearing Officer (DHO) imposes one or more of sanctions A through E. Sanction B.1 must be imposed for a VCCLEA inmate rated “violent” (an inmate who, per the Violent Crime Control and Law Enforcement Act of 1994, committed a crime of violence on or after September 13, 1994) and for a PLRA inmate (an inmate sentenced for an offense committed on or after April 26, 1996, per the Prison Litigation Reform Act). The DHO may impose any available sanctions (A through M) in addition to sanctions A through E. All Greatest severity level charges must be referred to the DHO.

(2) **High Severity Level Offenses.** The DHO imposes one or more of sanctions A through M, and, except as noted in the sanction, may also suspend one or more sanctions A through M. Sanction B.1 must be imposed for a VCCLEA inmate rated “violent” and for a PLRA inmate. All High severity level charges must be referred to the DHO.

Prohibited Act Code 225, Stalking, is for the purpose of punishing repetitive inmate behavior, e.g., loitering, staring, leering, inappropriate remarks (short of insolence, profanity, or sexual proposals), that are not clearly covered by another prohibited act code. When staff encounter such behavior, the inmate should be specifically warned that it is inappropriate and must cease. If the behavior fits another prohibited act code provision, the inmate should be charged with violating that specific provision instead of stalking. Examples of other prohibited act code behavior that may be used instead of Code 225, Stalking, include, but are not limited to Insolence (Code 312), Being in an Unauthorized Area (Code 316), Threatening (Code 203), and Making a Sexual Proposal or Threat (Code 206).

(3) **Moderate Severity Level Offenses.** The DHO imposes at least one sanction A through M, but, except as noted in the sanction, may suspend any sanction(s) imposed. Sanction B.1 ordinarily must be imposed for a VCCLEA inmate rated “violent” and for a PLRA inmate.

Except for charges referred to the DHO, the Unit Discipline Committee (UDC) shall impose at least one sanction F through M, but may suspend any sanctions imposed.

The UDC ordinarily refers to the DHO a moderate severity level charge for a VCCLEA inmate rated “violent” or for a PLRA inmate if the inmate was found to have committed two moderate offenses during his/her current anniversary year (the 12-month period for which an inmate may be eligible to earn good conduct time [GCT]). The UDC must document the reasons why a third charge for such an inmate was not referred to the DHO.

A prohibited act charge for 331 involving tobacco or nutritional supplements must be referred to the DHO for final disposition.

(4) **Low Severity Level Offenses.** The DHO imposes at least one sanction B.1, or D through M. The DHO may suspend any sanction(s) imposed; however, a B.1 sanction may not be suspended. Except for charges referred to the DHO, the UDC imposes at least one sanction F through M, but may suspend any sanction(s) imposed.

The UDC ordinarily refers to the DHO a low severity level charge for a VCCLEA inmate rated “violent” or for a PLRA inmate if the inmate had been found to have committed three low offenses during his/her current anniversary year. The UDC must document the reasons why a charge for such an inmate was not referred to the DHO.

Sanction B.1 may be imposed on the Low severity level **only** if the inmate has committed a Low severity level prohibited act more than once within a six-month period (except for a VCCLEA inmate rated “violent” or a PLRA inmate).

(5) **All Severity Level Offenses.** In all categories of severity, **aiding** another person to commit any of these offenses, **attempting** to commit them, or **making plans** to commit them, **is considered equivalent to committing the offense itself**. In these cases, the letter “A” is combined with the offense code. For example, planning an escape is Escape, Code 102A. Attempting to adulterate food or drink is Code 209A.

When the prohibited act is **Interfering with a Staff Member in the Performance of Duties (Code 198, 298, 398 or 498) or Conduct Which Disrupts (Code 199, 299, 399, or 499)**, the DHO or UDC must specify the severity level of the conduct that is most comparable to an offense(s) at that severity level. **Example:** “I find the act of Conduct Which Disrupts (Code 299) to be of High severity level, most comparable to the prohibited act of Engaging in a Group Demonstration (Code 212).”

Suspensions of any sanction cannot exceed six months. Suspended sanctions may only be revoked and executed if the inmate is found to have committed a subsequent prohibited act. Only the DHO may execute, suspend, or revoke and execute suspension of sanctions A through E (B and B.1. may never be suspended). The DHO or UDC may execute, suspend, or revoke and

execute suspensions of sanctions F through M. The DHO may execute UDC-suspended sanctions. However, the UDC may **not** execute DHO-suspended sanctions A through E.

When an inmate receives an incident report while on a DHO-imposed, but suspended sanction, the new incident report is forwarded by the UDC to the DHO, both for a final disposition on the new incident report, and for a disposition on the suspended sanction. This procedure is not necessary when the UDC informally resolves the new incident report. The DHO may return an incident report to the UDC if a decision not to execute the suspended sanction is made.

The UDC or DHO may impose increased sanctions for repeated, frequent offenses per the guidelines in Table 2.

Noting that not all UDC or DHO decisions finding an inmate committed a prohibited act will result in a change to the inmate's security designation score, the Unit Team may recommend a greater security transfer, using their professional judgment, and in accordance with the policy on Inmate Security Designation and Custody Classification.

§ 541.4 Loss of good conduct sentence credit as a mandatory sanction.

(a) You will lose good conduct sentence credit as a mandatory disciplinary sanction if you are in one of the following two groups:

(1) *VCCLEA-violent inmates.* The date of your U.S. Code offense was on or after September 13, 1994, but before April 26, 1996, and you committed a “crime of violence” as defined by the Violent Crime Control and Law Enforcement Act of 1994 (VCCLEA); or

(2) *PLRA inmates and D.C. Code offenders.* The date of your U.S. Code offense was on or after April 26, 1996, and, therefore, under the Prison Litigation Reform Act (PLRA), or the date of your District of Columbia (DC) Code offense was on or after August 5, 2000.

(b) If you are an inmate in one of the above groups and commit a prohibited act, you will lose good conduct sentence credit as a mandatory disciplinary sanction. The amount of good conduct sentence credit you will lose depends on the severity level of the prohibited act(s) committed, as follows:

(1) *Greatest Severity Level Offenses.* You will lose at least 41 days, or 75% of available credit if less than 54 days are available for the prorated period, for each act committed.

(2) *High Severity Level Offenses.* You will lose at least 27 days, or 50% of available credit if less than 54 days are available for the prorated period, for each act committed.

(3) Moderate Severity Level Offenses. You will lose at least 14 days, or 25% of available credit if less than 54 days are available for the prorated period, after committing two or more Moderate severity acts during the current year of your good conduct sentence credit availability.

(4) Low Severity Level Offenses. You will lose at least 7 days, or 12.5% of available credit if less than 54 days are available for the prorated period, after committing three or more Low severity acts during the current year of your good conduct sentence credit availability.

Available Sanctions (upon finding the inmate committed the prohibited act(s)):

(A) Recommend Parole Date Rescission or Retardation. The DHO may recommend retardation or rescission of parole grants to the U.S. Parole Commission or respective parole authority.

(B) Forfeit Earned Statutory Good Time, Non-vested Good Conduct Time, or Terminate or Disallow Extra Good Time.

Forfeited good conduct time (GCT) is not eligible for restoration. However, *forfeited statutory good time* (SGT) may be restored. Restoration of statutory good time is approved at initial eligibility only when the inmate has shown a period of improved good behavior. When the Warden (or designee) denies restoration of forfeited statutory good time, the unit team notifies the inmate of the reasons for denial. The unit team establishes a new eligibility date, not to exceed six months from the date of denial.

An application for restoration of statutory good time is forwarded from the inmate's unit team, through the DHO and Captain for comments, to the Warden for final decision.

Inmates who committed their crimes on or after November 1, 1987, and are sentenced under the Sentencing Reform Act provisions of the Comprehensive Crime Control Act, are only eligible to receive 54 days GCT credit (18 U.S.C. § 3624(b)). This credit is given at the end of each year served and, once given, is vested. For these inmates, the DHO's authority is final and subject only to review by the Regional Director to ensure conformity with the discipline policy and by inmate appeal through Administrative Remedy procedures.

The statutory good time available for forfeiture is limited to an amount computed by multiplying the months served at the time of the offense for which forfeiture is taken, by the applicable monthly rate specified in 18 U.S.C. § 4161 (less previous forfeiture or withholding). The amount of GCT available for forfeiture is limited to total days in "non-vested" status at the time of misconduct (less previous forfeiture).

Forfeiture of GCT may not be suspended.

Disallowance of extra good time is limited to extra good time for the calendar month in which the violation occurs. It may not be withheld or restored.

The sanction of termination or disallowance of extra good time may not be suspended.

Forfeited GCT will not be restored. Authority to restore forfeited statutory good time is delegated to the Warden, and may not be delegated lower than the Associate Warden level. Limitations on this sanction and eligibility for restoration are based on the severity scale. (See Table 2.)

To ensure an inmate's case is not overlooked when statutory good time has been forfeited, the unit manager will ensure the eligibility requirements are reviewed for restoration per the time frames in the Program Statement on Classification and Program Review of Inmates. A recommendation of the unit team for or against restoration is forwarded to the Warden through the DHO and Captain. Except as noted, eligibility for restoration of forfeited statutory good time is computed from the date of the withholding or forfeiture action by the DHO.

An inmate who has escaped and receives a forfeiture at a subsequent in absentia hearing begins the eligibility for restoration period upon return to Bureau custody. The Warden refers to the Regional Director any case where exceptional circumstances support restoration of statutory good time before completion of the eligibility requirements.

Sanction B does not apply to inmates committed under the Comprehensive Crime Control Act for crimes committed on or after November 1, 1987, and prior to passage of the Violent Crime Control and Law Enforcement Act of 1994 (September 23, 1994). For those inmates, the applicable sanction is B.1.

(B.1) Disallowance of Good Conduct Time. An inmate sentenced under the Sentencing Reform Act provisions of the Comprehensive Crime Control Act (committed a crime on or after November 1, 1987) may not receive statutory good time, but is eligible to receive 54 days GCT credit each year (18 U.S.C. § 3624(b)). Once awarded, the credit is vested, and may not be disallowed.

Crimes committed on or after September 13, 1994, and before April 26, 1996, (VCCLEA) credit is not vested unless the inmate has earned or is making satisfactory progress toward a high school diploma or equivalent degree (or is exempt because of a learning disability).

For crimes committed on or after April 26, 1996, (PLRA and SRAA) GCT credit toward an inmate's service of sentence vests on the date the inmate is released. Once disallowed, the credit may not be restored, except by immediate review or appeal as indicated below. Prior to this award being made, the credit may be disallowed for an inmate found to have committed a prohibited act.

A sanction of GCT disallowance may not be suspended. Only the DHO can take action to disallow GCT. The DHO considers the severity of the prohibited act and the suggested disallowance guidelines in making a determination.

A decision to go above the guideline is warranted for a greatly aggravated offense or a repeated violation of another prohibited act within a relatively short time (e.g., within 24 months for a greatest severity level prohibited act, 18 months for a high severity level prohibited act, and 12 months for a moderate severity level prohibited act). A decision to go below the guidelines is warranted for strong mitigating factors. A decision above or below the guidelines is justified in the DHO report.

VCCLEA inmates rated “violent” and PLRA inmates are ordinarily disallowed GCT for each prohibited act they are found to have committed at a DHO hearing, consistent with the following:

- **Greatest Severity Level Offenses.** A minimum of 41 days (or, if less than 54 days are available for the prorated period, a minimum of 75% of available GCT) for each act committed.
- **High Severity Level Offenses.** A minimum of 27 days (or, if less than 54 days are available for the prorated period, a minimum of 50% of available GCT) for each act committed.
- **Moderate Severity Level Offenses.** A minimum of 14 days (or, if less than 54 days are available for the prorated period, a minimum of 25% of available GCT) for each act committed if the inmate has committed two or more moderate severity level offenses during the current anniversary period.
- **Low Severity Level Offenses.** A minimum of 7 days (or, if less than 54 days are available for the prorated period, a minimum of 12.5% of available GCT) for each act committed if the inmate has committed three or more low moderate offenses during the current anniversary period.

Except for VCCLEA inmates rated “violent” or PLRA inmates, Sanction B.1 may be imposed on the Low severity level only where the inmate has committed a Low severity level act more than once within a six-month period.

GCT credit may only be given to an inmate serving a sentence of more than one year, but less than life. In the last year or part of a year of an inmate’s sentence, only the GCT available for the time remaining may be disallowed.

(C) Disciplinary Segregation. The DHO may direct that an inmate be placed or retained in disciplinary segregation. Consecutive disciplinary segregation sanctions can be imposed for inmates found to have committed offenses that are part of different acts only. Limits on time in disciplinary segregation are based on the severity scale (see Tables 1 and 2).

Unless otherwise specified by the DHO, disciplinary segregation placements for different or separate prohibited acts are imposed consecutively.

(D) Make Monetary Restitution. The DHO may direct that an inmate reimburse the U.S. Treasury for damages to U.S. Government property that the individual caused or contributed to. The UDC is prohibited from imposing the sanction of make monetary restitution.

Commissary privileges should be suspended by the DHO until restitution is made. See the Program Statement **Trust Fund/Deposit Fund Manual** for instructions regarding impoundment of inmate funds.

(E) Monetary Fine. The DHO may direct that an inmate pay a fine, as follows:

- Greatest severity level offense – Up to \$500, or 75% of the inmate's trust fund balance.
- High severity level offense – Up to \$300, or 50% of the inmate's trust fund balance.
- Moderate severity level offense – Up to \$100, or 25% of the inmate's trust fund balance.
- Low severity level offense – Up to \$50, or 12.5% of the inmate's trust fund balance.

Commissary privileges should be suspended until the fine is paid. See the Trust Fund/Deposit Fund Manual for instructions regarding impoundment of inmate funds.

This sanction cannot be used as a form of monetary restitution. The UDC is prohibited from imposing the sanction of monetary fine.

(F) Loss of Privileges (e.g., visiting, telephone, e-mail, commissary, movies, recreation). The DHO or UDC may direct that an inmate forego specific privileges for a specified time.

The DHO or UDC may impose non-contact visiting or immediate family-only visitation in addition to loss of visiting.

Loss of recreation privileges (exercise periods) may not be imposed on inmates in a Special Housing Unit (SHU), but may be used for general population inmates.

The DHO or UDC may impose a loss of mattress sanction from lights on to lights off for inmates in the SHU. Staff must ensure the inmate has a mattress from lights off to lights on.

(G) Change Housing (Quarters). The DHO or UDC may direct that an inmate be moved to other housing.

(H) Remove from Program or Group Activity. The DHO or UDC may direct that an inmate not participate in any program or group activity for a specified time.

(I) Loss of Job. The DHO or UDC may direct that an inmate be removed from his/her present job or assigned to another job.

(J) Impound Inmate's Personal Property. The DHO or UDC may direct that an inmate's personal property be stored in the institution for a specified time.

(K) Confiscate Contraband.

(L) Restrict Quarters. The DHO or UDC may direct that an inmate be confined to quarters or its immediate area for a specified time.

(M) Extra Duty. The DHO or UDC may direct that an inmate perform tasks other than those performed during his/her regular job.

CHAPTER 2.

§ 541.5 Discipline process.

(a) Incident report. The discipline process starts when staff witness or reasonably believe that you committed a prohibited act. A staff member will issue you an incident report describing the incident and the prohibited act(s) you are charged with committing. You will ordinarily receive the incident report within 24 hours of staff becoming aware of your involvement in the incident.

When staff witness or reasonably believe that a violation of Bureau regulations has been committed, staff must prepare an incident report and forward it to the appropriate Lieutenant. The Lieutenant will enter the incident report into SENTRY.

The reporting employee immediately completes Part 1 of the incident report. The incident is a prohibited act listed in Appendix C. The entire language of the prohibited act(s) does not have to be copied. For example, "Destroying Government Property, Code 218" or "Possessing Narcotics, Code 113" would be acceptable listings.

The description of the incident should contain all facts known by the employee that are not confidential. Anything unusual about the inmate's behavior should be noted. The reporting employee also lists persons (staff, inmates, others) at the scene, and physical evidence (weapons, property, etc.) the employee may have handled. The report reflects any actions taken, including use of force. The reporting employee signs the report, enters his/her title, date, and time, and forwards it to the Lieutenant. The description of the incident provides the inmate with specific evidence for which he/she may prepare a defense.

References to attachments and other investigative materials should not be identified in Section 11 of the report. For example, if staff observe two inmates in a physical altercation, the reporting officer should describe in Section 11 specific actions by each inmate; e.g., throwing punches to the head with a closed fist, striking one another with closed fists, biting, scratching, hair pulling.

Acts are different or separate if they have different elements (time, place, persons involved, actions). For example, if an inmate is involved in a fight with another inmate and also strikes a staff member trying to break it up, the inmate can be charged with fighting (Code 201) and assaulting a staff member (Code 224 or 101, depending on seriousness of injuries).

Code 305, Possession of anything not authorized, may be appropriate for inmates possessing items in excess of authorized limits.

Codes 199, 299, and 399, most like 196, 296, and 396, respectively, may be appropriate for inmates using electronic messaging (e.g., TRULINCS) in violation of policy. Sanctions Code F., Loss of privileges, in the form of loss of electronic messaging privileges, may be an appropriate sanction for these offenses.

(b) Investigation. After you receive an incident report, a Bureau staff member will investigate it.

The Investigating Officer is an employee at the supervisory level who conducts an investigation of alleged inmate misconduct. The Investigating Officer must be IDC-certified, and may not be the employee reporting the incident or otherwise be involved in the incident. The officer is ordinarily a Lieutenant, but the Warden may appoint another staff member.

Staff conduct the investigation as promptly as possible. The Investigating Officer is ordinarily appointed within 24 hours of the incident report. The investigation should be finished within 24 hours after the appointment.

When it appears likely that the incident may involve criminal prosecution, the investigating officer suspends the investigation. Staff may not question the inmate until the FBI or other investigative agency releases the incident report for administrative processing. The incident report should then be delivered to the inmate by the end of the next business day. The time frame for processing the Incident report is suspended until it is released for processing.

The Investigating Officer may informally resolve the Incident report (except for prohibited acts in the Greatest or High severity level categories) or conduct an investigation consistent with this section.

(1) Information: The investigator will specifically inform you:

(A) of the charge(s) against you; and

(B) that you may remain silent at all stages of the discipline process, but that your silence may be used to draw an adverse inference against you at any stage of the process. Your silence alone, however, cannot be the basis for finding you committed the prohibited act(s).

(2) Statement: When the investigator asks for your statement, you may give an explanation of the incident, request any witnesses be interviewed, or request that other evidence be obtained and reviewed. However, the staff investigation of the incident report may be suspended before requesting your statement if it is being investigated for possible criminal prosecution.

The Investigating Officer provides a copy of the incident report to the inmate at the beginning of the investigation, unless there is good cause for later delivery, such as absence of the inmate from the institution or a medical condition that argues against delivery. If the investigation is delayed, any employee may deliver the charge(s) to the inmate. The reason for the delay must be documented in the discipline record.

The incident report should be delivered to the inmate within 24 hours of the time staff become aware of the inmate's alleged misconduct. If an incident is referred for prosecution, the report is delivered by the end of the next business day after release for administrative processing. (The five-day time frame for a UDC review starts when the incident report is released for administrative processing.)

The staff member must record the date and time the inmate received a copy of the report. The investigator also reads the charge(s) to the inmate and asks for the inmate's statement about the incident.

The investigator then talks to persons with direct and relevant information, and summarizes their statements. (For example, if an inmate was in a fight, the investigator talks with the other inmate(s) involved.) Often, the investigator will want to talk to the reporting employee to obtain a report firsthand and to clarify any questions. Although an inmate may not identify or request any witnesses at this stage of the discipline process, the investigator should interview any witnesses to the incident (and victims, if applicable) to record their statements. The investigator records the disposition of evidence.

If practicable, the inmate's statements offering a rationale for his/her conduct or for the charges against him/her should be investigated. If the inmate requests exculpatory evidence, such as video or audio surveillance, the investigator must make every effort to review and preserve the evidence. It would also be prudent for the investigator to review and preserve the video or audio surveillance even if the inmate does not make a specific request as such evidence is relevant to the incident.

An inmate who receives an Incident report based on a "positive" urine test may claim this result comes from either:

- Permissible medication he/she was given.
- A combination of medications he/she is taking.

In the first situation, the investigator must contact Health Services staff to determine if the inmate is receiving medication that contains the compound found in the urinalysis. In the second situation, the investigator must confirm that the inmate is authorized to take the medications. When necessary, the testing laboratory is contacted to see if the combined medications could produce a "false positive."

While an inmate can challenge the **results** of a urine test, and this may be considered by the DHO, the validity of the testing **process** is not at issue. Neither the investigator nor the DHO has the experience to assess the accuracy of the laboratory process. See the Program Statement **Urine Surveillance**.

Under Comments and Conclusions, the investigator may include:

- Comments on the inmate's prior record and behavior.
- Analysis of any conflict between witnesses.
- Conclusions regarding what happened.

The investigator must record all steps and actions taken on the incident report and forward the relevant materials to staff holding the initial hearing.

The inmate does not receive a copy of the investigation (Sections 23 through 27 of the incident report). However, if the case is ultimately forwarded to the DHO, the DHO must give a copy of the investigation and other relevant materials to the inmate's staff representative, if requested, for use on the inmate's behalf.

The UDC chairman or DHO taking **final** action ensures that the required information is entered into SENTRY. The unit team files all discipline documents in the inmate's central file.

(3) *Informally resolving the incident report.* The incident report may be informally resolved at any stage of the disciplinary process, except for prohibited acts in the Greatest and High severity levels, or as otherwise required by law or these regulations. If the incident report is informally resolved, it will be removed from your records.

The Bureau encourages informal resolution of incidents. However, prohibited acts in the Greatest severity level (100 level) and High severity level (200 level) may not be informally resolved, and must be referred to the DHO. Moderate severity level (300 level) and Low severity level (400 level) offenses can be informally resolved at any stage of the process. A record of any informal resolution is maintained in SENTRY. However, the incident report is not filed in the inmate's central file.

Staff may suspend discipline proceedings up to two calendar weeks while informal resolution is undertaken. If informal resolution is unsuccessful, staff may reinstate disciplinary proceedings at the stage at which they were suspended. The time requirements then restart at the point at which they were suspended. Staff are required to write the incident report before starting informal resolution so the facts of the incident will be preserved if informal resolution is not successful. While informal resolution requires the consent of both staff and inmate to be successful, the determination to informally resolve an incident report is solely at the discretion of staff.

CHAPTER 3.

§ 541.6 Mentally ill inmates.

If it appears you are mentally ill at any stage of the discipline process, you will be examined by mental health staff.

(a) *Competency to Participate in Disciplinary Proceedings.* If evidence indicates that you cannot understand the nature of the disciplinary proceedings, or cannot help in your own defense, disciplinary proceedings may be postponed until you are competent to participate. The Unit Disciplinary Committee or Discipline Hearing Officer will make this decision based on evidence, including evidence presented by mental health staff.

(b) *Responsibility for Conduct.* You will not be disciplined for conduct committed when, as the result of a severe mental disease or defect, you were unable to appreciate the nature and quality, or wrongfulness of the act. The UDC or DHO will make this decision based on evidence, including evidence presented by mental health staff.

If it appears at any stage of the discipline process that an inmate is mentally ill, staff refers him/her to a mental health professional to determine whether he/she is responsible for his/her conduct or is incompetent. Staff may take no discipline action against an inmate who is determined by a mental health professional to be incompetent to participate in the disciplinary proceedings or not responsible for his/her behavior.

A person is **not responsible** for his/her conduct if, at the time of the conduct, as a result of a severe mental disease or defect, he/she was unable to appreciate the nature and quality or the wrongfulness of his/her acts. When a person is determined not responsible for his/her conduct, the incident report shows as a finding that the person did not commit the prohibited act because he/she was found not mentally responsible. The incident report is retained in the inmate's central file. The DHO or UDC, as appropriate, enters this finding into SENTRY in the Chronological Disciplinary Record.

A person is **incompetent** if he/she lacks the ability to understand the disciplinary proceedings, or to assist in his/her defense. When a person is determined incompetent, the disciplinary proceedings are postponed until the inmate is able to understand the proceedings and assist in his/her defense. If competency is not restored within a reasonable time, the incident report shows as a finding that the inmate is incompetent. The incident report is retained in the inmate's central file. The DHO or UDC chairman records the finding into SENTRY in the Chronological Disciplinary Record.

Generally, the UDC initiates referral to a mental health professional. However, staff at any stage of the discipline process may make such a referral. The completed mental health evaluation is returned to the UDC, which then decides whether the incident may be handled by the UDC (other than Greatest or High severity level), or referred to the DHO. In Greatest or High severity level cases, the UDC may refer an inmate for a mental health evaluation along with referral to the DHO. The completed evaluation is returned to the UDC, which forwards it to the DHO.

CHAPTER 4.

§ 541.7 Unit Discipline Committee (UDC) review of the incident report.

A Unit Discipline Committee (UDC) will review the incident report once the staff investigation is complete. The UDC's review involves the following:

(a) *Available dispositions.* The UDC will make one of the following decisions after reviewing the incident report:

- (1) You committed the prohibited act(s) charged, and/or a similar prohibited act(s) as described in the incident report;
- (2) You did not commit the prohibited act(s) charged; or
- (3) The incident report will be referred to the Discipline Hearing Officer (DHO) for further review, based on the seriousness of the prohibited act(s) charged.
- (4) If you are charged with a Greatest or High severity prohibited act, or are an inmate covered by § 541.4, the UDC will automatically refer the incident report to the DHO for further review.

(b) *UDC members.* The UDC ordinarily consists of two or more staff. UDC members will not be victims, witnesses, investigators, or otherwise significantly involved in the incident.

The Warden designates ordinarily two or more unit staff members to hold an initial review and impose available sanctions upon completion of the investigation of alleged misconduct for moderate category and low category offenses. One staff member UDCs are permitted when other members are not reasonably available.

Only one unit staff member is required to hold an initial review when the incident report is required by policy to be referred to the DHO.

A staff member witnessing an incident may serve on the UDC in cases where virtually every staff member in the institution witnessed the incident in whole or in part.

A staff member may not sit on the UDC without successfully completing the self-study program for UDC certification.

Each Warden must select at least one UDC Trainer to monitor the progress of staff participating in the self-study program.

(c) *Timing.* The UDC will ordinarily review the incident report within five work days after it is issued, not counting the day it was issued, weekends, and holidays. UDC review of the incident report may also be suspended if it is being investigated for possible criminal prosecution.

The Warden's approval is required for any extension beyond five work days. The UDC will ensure the approval is documented and included in the discipline packet. The time that an incident report is suspended for referral to another agency for possible prosecution is not included in this five work day time frame. The time line commences when the incident report is released from the outside agency for administrative processing. However, the inmate should be advised of the delay, and if appropriate, the reason for the delay.

(d) *Inmate appearance.* You are permitted to appear before the UDC during its review of the incident report, except during UDC deliberations or when your presence would jeopardize institution security, at the UDC's discretion. Also:

(1) You may appear either in person or electronically (for example, by video or telephone conferencing) at the UDC's discretion.

(2) You may waive your appearance before the UDC. If you waive your appearance, the UDC will review the incident report in your absence.

(3) If you escape or are otherwise absent from custody, the UDC will conduct a review in your absence at the institution where you were last confined.

The UDC must document its reasons for excluding an inmate from the hearing.

A waiver may be in writing, signed by the inmate, or if the inmate refuses to sign, by a memo indicating the inmate's refusal to appear (Waiver of Appearance (BP-A0307)).

(e) *Evidence.* You are entitled to make a statement and present documentary evidence to the UDC on your own behalf. The UDC will consider all evidence presented during its review. The UDC's decision will be based on at least some facts and, if there is conflicting evidence, on the greater weight of the evidence.

The phrase "some facts" refers to facts indicating the inmate committed the prohibited act. The phrase "greater weight of the evidence" refers to the strength of the evidence.

(f) *Sanctions.* If you committed a prohibited act(s), the UDC can impose any of the available sanctions listed in Tables 1 and 2, except loss of good conduct sentence credit, disciplinary segregation, or monetary fines.

(g) Referral to the DHO. If the UDC refers the incident report to the DHO for further review, the UDC will advise you of your rights at the upcoming DHO hearing, as detailed in § 541.8.

The UDC is prohibited from imposing the sanctions of make monetary restitution or monetary fines.

The UDC forwards copies of relevant documents to the DHO with a statement of reasons for the referral, along with recommendations for sanctions if the DHO finds the inmate has committed the act or another prohibited act. The UDC Chair records reasons for the referral and recommendations for disposition in the “Committee Action” section of the incident report. Recommendations are contingent upon a DHO finding that the inmate committed the act.

When charges are referred to the DHO, the UDC advises the inmate of the rights afforded at a hearing. The UDC asks the inmate to choose a staff representative, if any, and the names of witnesses the inmate wishes to be called to testify and what testimony they are expected to provide. The UDC advises the inmate that he/she may waive the right to be present at the hearing, but still have witnesses or a staff representative appear on his/her behalf.

If an inmate waives the right to appear at the UDC review, the UDC ensures the inmate is advised of the rights afforded at a hearing before the DHO (see forms for Inmate Rights at Discipline Hearing and Notice of Discipline Hearing Before the Discipline Hearing Officer (DHO)).

(h) Written report. You will receive a written copy of the UDC’s decision following its review of the incident report.

The UDC prepares a record of its proceedings, which need not be verbatim. A record of the hearing and supporting documents is kept in the inmate’s central file.

The UDC gives the inmate a written copy of the decision and disposition by the close of business the next work day. Action taken as a minor disposition may be reviewed under the Administrative Remedy Program (see 28 CFR Part 542, Subpart B.).

All UDC member(s) must print their name and sign Part II of the incident report to certify they served on the UDC and that the completed Part II accurately reflects their review.

When the UDC finds the inmate committed the prohibited act charged or a similar prohibited act reflected in the incident report, the chair ensures the information is entered into SENTRY in the Chronological Disciplinary Record.

(i) Appeals. You may appeal the UDC’s action(s) through the Administrative Remedy Program, 28 CFR Part 542, Subpart B.

The Program Statement **Administrative Remedy Program** covers the regulations in 28 CFR Part 542, Subpart B. In addition to a review under the Administrative Remedy procedure, the Warden or designee audits and reviews discipline hearings and dispositions to ensure conformity with this policy.

When the UDC holds a full review and determines that the inmate did not commit a prohibited act of Moderate or Low severity, the UDC expunges the inmate's file of the incident report and related documents.

CHAPTER 5.

§ 541.8 Discipline Hearing Officer (DHO) hearing.

The Discipline Hearing Officer (DHO) will only conduct a hearing on the incident report if referred by the UDC. The DHO's hearing involves the following:

(a) *Available dispositions.* The DHO will make one of the following decisions after a hearing on the incident report:

(1) You committed the prohibited act(s) charged, and/or a similar prohibited act(s) as described in the incident report;

(2) You did not commit the prohibited act(s) charged; or

(3) The incident report will be referred back for further investigation, review, and disposition.

(b) *Discipline Hearing Officer.* The DHO will be an impartial decision maker who was not a victim, witness, investigator, or otherwise significantly involved in the incident.

The term Discipline Hearing Officer (DHO) refers to a one-person, independent officer who conducts hearings and imposes sanctions for incidents of misconduct referred by the UDC. A DHO may not conduct hearings without receiving specialized training and passing a certification test. If the institution's assigned DHO is unable to conduct hearings, the Warden arranges for another DHO, who must be certified.

The DHO may not hear any case not referred by the UDC. Only the DHO has authority to impose or suspend sanctions A through E.

(c) *Timing.* You will receive written notice of the charge(s) against you at least 24 hours before the DHO's hearing. You may waive this requirement, in which case the DHO's hearing can be conducted sooner.

The inmate does not appear before the DHO less than 24 hours before receiving written notice, unless he/she is to be released from custody within that time or waives the 24-hour notice requirement.

(d) *Staff Representative.* You are entitled to have a staff representative during the DHO hearing process as follows:

(1) *How to get a staff representative.* You may request the staff representative of your choice, so long as that person was not a victim, witness, investigator, or otherwise significantly involved in the incident. If your request(s) cannot be fulfilled, and you still want a staff representative, the Warden will appoint one. The Warden will also appoint a staff representative if it appears you are unable to adequately represent yourself before the DHO, for example, if you are illiterate or have difficulty understanding the charges against you.

(2) *How the staff representative will help you.* Prior to the DHO's hearing, the staff representative will be available to help you understand the incident report charges and potential consequences. The staff representative may also assist you by speaking with and scheduling witnesses, obtaining written statements, and otherwise helping you prepare evidence for presentation at the DHO's hearing. During the DHO's hearing, you are entitled to have the staff representative appear and assist you in understanding the proceedings. The staff representative can also assist you in presenting evidence during the DHO's hearing.

(3) *How the staff representative may appear.* Your staff representative may appear either in person or electronically (for example, by video or telephone conferencing) at the DHO's discretion. If your staff representative is not available for the scheduled hearing, you may either select another staff representative, request the hearing be postponed for a reasonable amount of time until your staff representative can appear, or proceed without a staff representative.

The Warden provides a full-time staff member to represent an inmate, if requested. If the request cannot be fulfilled, and the inmate still wants a staff representative, the Warden will appoint one. The executive staff, the DHO or alternate DHO, reporting officer, investigating officer, witnesses to the incident, and UDC members involved in the case may not be staff representatives. The Warden may exclude other staff in a particular case or when there is a potential conflict.

The DHO arranges for the presence of the staff representative selected by the inmate. If the staff member declines or is unavailable, the inmate can select another representative, wait a reasonable period for the staff member's return, or proceed without a representative. The DHO affords a staff representative adequate time to speak with the inmate and interview witnesses. While it is expected that a staff member will have ample time to prepare before the hearing, delays to allow additional preparation may be ordered by the DHO.

(e) *Inmate appearance.* You are permitted to appear before the DHO during the hearing on the incident report as follows:

- (1) You may appear either in person or electronically (for example, by video or telephone conferencing), at the DHO's discretion.
- (2) Your appearance may be prohibited during DHO deliberations or when your presence would jeopardize institution security, at the DHO's discretion.
- (3) You may waive your appearance before the DHO. If you waive your appearance, the DHO hearing will be conducted in your absence.
- (4) If you escape or are otherwise absent from custody, the DHO will conduct a hearing in your absence at the institution where you were last confined.

Although an inmate may waive the right to be present, he/she may elect to have a staff representative and witness(es) appear.

The DHO must document reason(s) for excluding an inmate from the hearing. An inmate may waive the right to be present, provided the waiver is documented and reviewed by the DHO. A waiver may be in writing, signed by the inmate, or if the inmate refuses to sign, by a memo signed by staff and witnessed by a second staff member indicating the inmate's refusal to appear.

The DHO may conduct a hearing in the absence of an inmate when the inmate waives the right to appear. If an inmate escapes or is otherwise absent, the DHO conducts a hearing in the inmate's absence at the institution in which the inmate was last confined. When an inmate returns to custody following an absence during which sanctions were imposed by the DHO, the Warden has the charges reheard before the DHO, ordinarily within 60 days after the inmate's arrival at the institution to which he/she is designated after return to custody, following an appearance before the UDC at that institution.

The UDC ensures that the inmate is aware of all rights for an appearance before the DHO, including delivery of charge(s), advisement of the right to remain silent, and other rights exercised before the DHO. Procedural requirements before the DHO apply to this in-person hearing, except that written statements of witnesses not readily available may be liberally used in place of in-person witnesses.

The DHO may affirm the earlier action taken, dismiss the charge(s), modify the finding of the original DHO as to the offense committed, or modify sanctions imposed in the inmate's absence.

When an inmate escapes, and is in local custody where a hearing may be held, an in-person rather than in-absentia hearing may be held at the DHO's discretion.

(f) Evidence and witnesses. You are entitled to make a statement and present documentary evidence to the DHO on your own behalf. The DHO will consider all evidence presented during the hearing. The DHO's decision will be based on

at least some facts and, if there is conflicting evidence, on the greater weight of the evidence. Witnesses may appear at the DHO's hearing as follows:

- (1) Witnesses may appear before the DHO either in person or electronically (for example, by video or telephone conferencing) at the DHO's discretion.
- (2) The DHO will call witnesses who have information directly relevant to the charge(s) and who are reasonably available. However, the DHO need not call witnesses adverse to you if their testimony is adequately summarized in the incident report or other investigation materials.
- (3) You or your staff representative may request witnesses appear at the hearing to testify on your behalf. Your requested witnesses may not appear if, in the DHO's discretion, they are not reasonably available, their presence at the hearing would jeopardize institution security, or they would present repetitive evidence.
- (4) If your requested witnesses are unavailable to appear, written statements can be requested by either the DHO or staff representative. The written statements can then be considered during the DHO's hearing.
- (5) Only the DHO may directly question witnesses at the DHO's hearing. Any questions by you or your staff representative must be submitted to the DHO, who will present the question to the witness in his/her discretion.
- (6) The DHO may consider evidence provided by a confidential informant (CI) that the DHO finds reliable. You will not be informed of the CI's identity. You will be informed of the CI's testimony to the extent it will not jeopardize institution security, at the DHO's discretion.

The DHO may refer the case back to the UDC for further information or disposition when the case does not warrant DHO involvement. When further investigation or more evidence is needed, the DHO may postpone or, before deciding whether a prohibited act was committed, continue the hearing until a later date. A postponement or continuance must be for good cause (determined by the DHO) and documented in the record.

The phrase "some facts" refers to facts indicating the inmate committed the prohibited act. The phrase "greater weight of the evidence" refers to the strength of the evidence, not to its quantity or to the number of witnesses testifying.

The DHO may consider negative information (e.g., known peddler of contraband) as part of the fact-finding process. Negative information may be used to draw an adverse inference against the inmate. However, negative information alone may not be used to support a finding that an inmate committed a prohibited act.

- **Witnesses.** An inmate may request witnesses from outside the institution. In such instances, the inmate charged may be excluded during the appearance of an outside witness. An outside witness should appear in an area in which outside visitors are usually allowed. Written statements from outside witnesses may be used by the DHO in lieu of live testimony.

The DHO need not call repetitive witnesses. The reporting officer and other adverse witnesses need not be called if their knowledge of the incident is adequately summarized in the incident report and other investigative materials. The DHO must document reasons for declining to call requested witnesses in the DHO report, or, if the reasons are confidential, in a separate report, not available to the inmate.

The inmate's staff representative, or, when the inmate waives staff representation, the DHO, questions witnesses requested by the inmate, who are called before the DHO. An inmate who waives staff representation may submit questions for requested witnesses in writing to the DHO. The inmate may not question witnesses.

When an inmate is excluded during the appearance of a witness, including an outside witness, the DHO informs the inmate before the close of the hearing of the substance of the testimony, except where security would be jeopardized.

There is no minimum or maximum number of witnesses who may be called; the number should be based on the situation and the information to be presented. While several eyewitnesses may be called, it is expected that the number of character witnesses would be limited, at the discretion of the DHO.

The DHO may not refuse to call a witness who is reasonably available (e.g., on a different shift) and has information relevant to the charge **solely** because the witness (staff or inmate) does not wish to appear. An inmate witness can be required to attend, and failure to cooperate with the DHO can result in disciplinary action (e.g., for Refusing to Obey an Order of a Staff Member, Code 307).

The DHO may notify the inmate when a witness does not wish to testify. This may be warranted when it appears that to force the witness's appearance could result in threats to a person's safety, or disruption to security or orderly running of the institution.

The statement of an inmate requesting a witness is not enough to mandate the witness's appearance. There must be an indication that the witness has information directly relevant to the charges.

The DHO may remind an inmate witness that statements at the hearing must be "true" to the best of the inmate's knowledge.

On occasion, an inmate may request a witness who is not reasonably available to testify in person (e.g., an inmate from another institution). When this occurs, the DHO ordinarily

allows time for the written statement of the witness to be received, if he/she is expected to have relevant information. The witness should sign the written statement. If an extension is not granted, the DHO must clearly state in the record reasons for not granting it.

- **Confidential informants.** When a discipline decision is based on confidential informant information, the UDC or DHO must document, ordinarily in the hearing report, their finding as to the reliability of each confidential informant and the factual basis for that finding. If the report would reveal the confidential informant's identity, this finding is part of a separate report prepared by the DHO, not available to the inmate.

Confidential informant information should not be used, or relied on in the report, when independent information is available to support a finding. Just because an informant provided information that opened an investigation does not mean that informant must be referred to, as long as there are other facts or independent evidence.

An **informant** is a person (non-staff, ordinarily an inmate) who provides staff (usually at the person's initiation) with information about the commission of an offense or about misconduct. A **confidential informant** is one whose identity must be protected for personal safety. Ordinarily, the finding that an inmate committed a prohibited act must be supported by more than one reliable confidential source. If there is only one, the confidential information must be corroborated by independently verified evidence linking the inmate to the prohibited act.

Uncorroborated confidential information from a single informant is **insufficient** as the sole basis for a finding, **unless** the circumstances of the incident and the knowledge possessed by the informant are convincing enough to show that the information must be reliable. In an unwitnessed assault, for example, the statement of a seriously injured assault victim **could** be sufficient to support a finding without corroborating evidence.

The reliability of a confidential informant must be established before the information may be used to support a finding. Reliability may be determined by a record of past reliability or by other factors that reasonably convince the DHO. The staff member providing information to the DHO must include a written statement of the frequency with which the informant provided information, the period during which the informant provided information, and the information's accuracy. If reliability is based on other factors, they must be clearly specified.

Staff have an obligation to determine whether there is any basis for concluding that the informant is providing false information. Neither the DHO nor UDC may consider information obtained in exchange for the promise of a favor to support its finding.

Confidential information presented to the UDC or DHO must be in writing and must state facts and the manner in which the informant learned the facts. If possible, the statement must be signed by the confidential informant. If the informant does not write a statement,

the staff member receiving the information provides the information in language as close to the informant's as possible (actual words where possible).

The identity of a confidential informant must be known, at a minimum, by the DHO. Where the UDC does not make a final disposition, but refers a case to the DHO, the UDC need not know the identity of an informant or the substance of the information.

An inmate's staff representative need not know the identity of informants. While confidential information may, at the discretion of the DHO, be divulged to, and challenged by, a staff representative, the **reliability** of informants may not be questioned by the staff representative. The DHO is responsible for establishing reliability.

Confidential informants' statements must, at a minimum, be incorporated in discipline hearing reports by reference. The UDC or DHO must document, ordinarily in the UDC or DHO report, their finding as to the reliability of each informant and its factual basis. The report must identify specific information relied on and the factual basis for that reliance. When the DHO decides that information given by a single confidential informant is sufficient, the report should include a rationale for that decision.

When the DHO determines that including information in the report would not reveal the identity of the informant, such information is included. When the DHO determines that including information in the report might reveal the identity of the informant, the DHO prepares a separate report documenting the findings of the reliability of each informant, their factual basis, the information relied on, and the factual basis for that reliance. This separate report need not be placed in the inmate central file, but is retained in a secure location as long as it is available for later administrative or judicial review, and as long as the separate report is incorporated by reference into the DHO report.

Since information received anonymously does not meet the necessary reliability standard, it may not be used as evidence in making a finding. Such information, however, may be used in the investigation.

When relying on confidential informant information in making a finding, the DHO must justify the reliability of this information and its factual basis. If the testimony of conflicting witnesses (any witness, not just confidential informants) is presented, or there are other conflicts in the evidence, the DHO indicates in the record the reason for believing the testimony of one witness over another or otherwise resolving the conflict. When including this information in the written report would jeopardize security, the DHO may provide it in a separate report, not available to the inmate.

(g) Sanctions. If you committed a prohibited act(s), the DHO can impose any of the available sanctions listed in Tables 1 and 2.

The Regional Director audits discipline hearings and dispositions to ensure conformity with this policy.

(h) *Written Report.* You will receive a written copy of the DHO's decision following the hearing. The DHO is not required to prepare a verbatim record of the hearing. The DHO's written report will document the following:

- (1) Whether you were advised of your rights during the DHO process;**
- (2) The evidence relied on by the DHO;**
- (3) The DHO's decision;**
- (4) The sanction imposed by the DHO; and**
- (5) The reason(s) for the sanction(s) imposed.**

The DHO prepares a record of the proceedings. The evidence, decision, and reasons for actions taken must be specific, unless this would jeopardize security. The DHO gives the inmate a written copy of the decisions and disposition, ordinarily within 15 work days of the decision.

The DHO signs the discipline hearing report, certifying that it accurately reflects the proceedings.

A record of the hearing and supporting documents are kept in the inmate central file.

The DHO ensures that the required information is entered into SENTRY in the inmate's Chronological Disciplinary Record.

If the DHO expunges an incident report, unit staff must ensure the inmate's central file does not include the incident report and/or related documents.

References to significant prohibited acts that are not supported by disciplinary actions and hearings may not be used by the Bureau in ways that have an adverse impact on an inmate, specifically the forfeiture or disallowance of good time, good conduct time, or a parole recommendation. Staff may maintain such references in an inmate's central file for use in making classification, administrative transfer, and other decisions if the following conditions are met:

- References in an inmate's central file must be maintained accurately. For example, an inmate suspected of being involved in an escape attempt who was never found to have violated disciplinary regulations or was never charged due to lack of evidence would have to have the lack of evidence noted in any reference to alleged involvement in the escape attempt.

- Placement of a reference to 100 or 200 severity level offenses not supported by disciplinary action in an inmate's central file may only be done with the written approval of the Warden of the institution where the incident occurred. This must be documented in the inmate's central file. Approval signifies that in the Warden's judgment this information is necessary for proper management of the inmate.

(i) *Appeals.* You may appeal the DHO's action(s) through the Administrative Remedy Program, 28 CFR Part 542, Subpart B.

The reviewing official (Warden, Regional Director, or General Counsel) may approve, modify, reverse, or send back with directions, including ordering a rehearing, any action of the UDC or DHO, but may not increase a valid sanction. The initial reviewing official for the UDC is the Warden. The decision of the DHO is final and subject to review only by the Regional Director to ensure conformity with the discipline policy and by appeal through the Administrative Remedy program. The DHO ensures the inmate is notified that any appeal must be made within the time frames in the Administrative Remedy procedures. The Warden may also review DHO hearings to the extent he or she considers necessary to ensure substantial compliance with the provisions of the discipline policy. Also, the DHO may receive informal complaints about the procedure and correct mistakes locally.

On appeals, the reviewing authority considers:

- Whether the UDC or DHO substantially complied with regulations on inmate discipline.
- Whether the UDC or DHO based its decision on facts.
- If there was conflicting evidence, whether the decision was based on the greater weight of the evidence.
- Whether an appropriate sanction was imposed or the severity level of the prohibited act, and other relevant circumstances.

The reviewing official is limited to determining if the UDC or DHO could have rationally concluded that the evidence supports the decision, not necessarily whether the reviewing official would have made the same decision.

The investigator, UDC members, DHO, reporting officer, or staff representative may not investigate or help prepare the response to administrative appeals from UDC or DHO actions.

Where a remand is directed, the UDC or DHO is bound by the original sanction(s), except where:

- The sanction is in violation of policy.
- The remand is made specifically because of the sanction.
- The inmate's behavior or activity since the first hearing is determined by the UDC or DHO to justify an increase or decrease in sanction(s). The intervening behavior or activity and the reasons for an increase or decrease in sanction(s) must be documented in the hearing record.

When an appeal results in the original sanction being replaced by a suspended sanction, the suspension (when possible) runs from the date the original sanction was imposed.

When an inmate files a Regional or Central Office appeal of a disciplinary action, those offices may request copies of disciplinary records. Each Warden will designate an appropriate staff member with the proper clearance to ensure that copies sent for review or appeal include confidential information, witness and notice of rights forms, staff memos concerning the incident, investigative reports, and any dissenting reports. Documentation is forwarded within three working days of the receipt of request.

Appendix A. LIST OF FORMS

- Incident Report (BP-A0288 JUN 11).
- Inmate Rights at Discipline Hearing (BP-A0293 JUN 11).
- Notice of Discipline Hearing Before the Discipline Hearing Officer (DHO) (BP-A0294 JUN 11).
- Duties of Staff Representative (BP-A0306 JUN 11).
- Waiver of Appearance (BP-A0307 JUN 11).
- Discipline Hearing Officer (DHO) Report (BP-A0304 JUN 11).

Appendix B. SUMMARY OF INMATE DISCIPLINE SYSTEM

1. Staff becomes aware of inmate's involvement in incident or once the report is released for administrative processing following a referral for criminal prosecution.

ordinarily maximum of 24 hours

2. Staff gives inmate notice of charges by delivering Incident Report.

maximum ordinarily of 5 work days from the time staff became aware of the inmate's involvement in the incident. (Excludes the day staff become aware of the inmate's involvement, weekends, and holidays.)

3. Initial review (UDC)

minimum of 24 hours
(unless waived)

4. Discipline Hearing Officer (DHO) Hearing

NOTE: Time limits are subject to exceptions as provided in the rules.

Staff may suspend disciplinary proceedings for a period not to exceed two calendar weeks while undertaking informal resolution. If informal resolution is unsuccessful, staff may reinitiate disciplinary proceedings. The requirements then begin running at the same point at which they were suspended.

Appendix C. INMATE RIGHTS AND RESPONSIBILITIES

RIGHTS

1. You have the right to expect that you will be treated in a respectful, impartial, and fair manner by all staff.
2. You have the right to be informed of the rules, procedures, and schedules concerning the operation of the institution.
3. You have the right to freedom of religious affiliation and voluntary worship.
4. You have the right to health care, which includes nutritious meals, proper bedding and clothing, and a laundry schedule for cleanliness of the same, an opportunity to shower regularly, proper ventilation for warmth and fresh air, a regular exercise period, toilet articles, and medical and dental treatment.
5. You have the opportunity to visit and correspond with family members and friends, and correspond with members of the news media, in accordance with Bureau rules and institution guidelines.
6. You have the right to unrestricted and confidential access to the courts by correspondence (on matters such as the legality of your conviction, civil matters, pending criminal cases, and conditions of your imprisonment.)

RESPONSIBILITIES

1. You are responsible for treating inmates and staff in the same manner.
2. You have the responsibility to know and abide by them.
3. You have the responsibility to recognize and respect the rights of others in this regard.
4. It is your responsibility not to waste food, to follow the laundry and shower schedule, maintain neat and clean living quarters, to keep your area free of contraband, and to seek medical and dental care as you may need it.
5. It is your responsibility to conduct yourself properly during visits. You will not engage in inappropriate conduct during visits to include sexual acts and introduction of contraband, and not to violate the law or Bureau guidelines through your correspondence.
6. You have the responsibility to present honestly and fairly your petitions, questions, and problems to the court.

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| <p>7. You have the right to legal counsel from an attorney of your choice by interviews and correspondence.</p> <p>8. You have the right to participate in the use of law library reference materials to assist you in resolving legal problems. You also have the right to receive help when it is available through a legal assistance program.</p> <p>9. You have the right to a wide range of reading materials for educational purposes and for your own enjoyment. These materials may include magazines and newspapers sent from the community, with certain restrictions.</p> <p>10. You have the right to participate in educational, vocational training, counseling, and employment programs as resources permit, and in keeping with your interests, needs, and abilities.</p> <p>11. You have the right to use your funds for commissary and other purchases, consistent with institution security and good order, for opening bank and/or savings accounts, and for assisting your family, in accordance with Bureau rules.</p> | <p>7. It is your responsibility to use the services of an attorney honestly and fairly.</p> <p>8. It is your responsibility to use these resources in keeping with the procedures and schedule prescribed and to respect the rights of other inmates to the use of the materials and assistance.</p> <p>9. It is your responsibility to seek and use such materials for your personal benefit, without depriving others of their equal rights to the use of this material.</p> <p>10. You have the responsibility to take advantage of activities which will aid you to live a successful and law-abiding life within the institution and in the community. You will be expected to abide by the regulations governing the participation in such activities.</p> <p>11. You have the responsibility to meet your financial and legal obligations, including, but not limited to, DHO and court-imposed assessments, fines, and restitution. You also have the responsibility to make use of your funds in a manner consistent with your release plans, your family needs, and for other obligations that you may have.</p> |
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Appendix D. DATA ENTRY INSTRUCTIONS

Each Discipline Hearing Officer (DHO) or Unit Discipline Committee (UDC) is responsible for the validity and accuracy of the data on all cases resolved at their level. It is critical that the data is reported correctly and uniformly.

Prohibited Acts. Data collection requirements apply only to the following prohibited acts:

- Code 100 – Killing.
- Code 101 – Assaulting any Person (Serious).
- Code 107 – Taking Hostages.
- Code 114 – Sexual Assault by Force.
- Code 203 – Threatening Another with Bodily Harm.
- Code 205 – Engaging in Sexual Acts.
- Code 206 – Making Sexual Proposals or Threats to Another.
- Code 224 – Assaulting any Person (Less Serious).
- Code 225 – Stalking.
- Code 229 – Sexual Assault without Force.

SENTRY Screens. When an inmate is found to have committed one or more of the prohibited acts listed above, the DHO or UDC enters data on the following SENTRY screens:

- Add Hearings/Findings or Update Status After Procedural Hearing.
- Update Hearing/Findings or Execute/Unexecute Sanctions.

Because data collection is not required at the charging or accusatory levels, there are no additional requirements for the Update Charges screen.

Data Keying Requirements. Four characters are available to enter data on a particular act; the fourth is always used for aiding and abetting or attempts (for example, code 101A).

For the prohibited acts specified above, SENTRY allows three additional characters (fields) for DHOs or UDCs to input data:

- The first field requires data on **type of victim**.
- The second requires data on **type of weapon** used.
- The third applies to the **nature of the injury**.

A fourth, separate field records whether the incident was referred for prosecution.

Type of Victim. The DHO and UDC Chairman must select one of three codes that best identifies the victim's status and enter it in the Additional Tracking Identifier (ATI) field for the prohibited act (e.g., ATI: S, ATI: O):

I = Inmate

S = Staff

O = Other

There can be only one victim for each prohibited act. When there are multiple victims (two or more inmates, or one staff member and one inmate), there must be multiple prohibited acts against the inmate. If there are multiple acts for the same code, they must be keyed under separate incident report numbers even though the finding could be based on a single incident report.

“Other” is entered when the victim is a visitor, contracting staff, U.S. Marshal, etc.

Type of Weapons Classification. DHOs must review the list of weapons codes starting from the top (code “A”) to the bottom (code “N”). Using this rank-ordered review, select the **first** code that **best** describes the most serious weapon the inmate used or attempted to use. The selection is placed in the second position after the type of victim (e.g. ATL: **SB**, ATL: **OF**):

- A gun
- B sharp object (used to inflict cutting injury)
- C pointed object (used to inflict stabbing injury)
- D solid\blunt object (thrown or used to hit)
- E toxic or flammable fluids or substances
- F fists\hands
- G feet\legs
- H bodily fluids\waste (spit, urine, feces, blood, etc.)
- J teeth
- K head
- L water
- M other or unknown
- N no weapon

“Weapons” refers to objects, instruments, or substances listed above that the inmate controlled at the time of the offense, and are considered an element of the offense.

When an inmate threatens to use a weapon that was not readily available or under his or her control at the time of the incident, select code “N”, “no weapon.”

Nature of Injury Assessment. The level of injury is best assessed by considering the medical treatment required, if any. Choose the injury code that best describes the most serious injury suffered. The choice is placed in the third position after type of weapon (e.g., ATL: **SB4**, ATL: **OF1**):

- 1 **No injury** - The victim or medical staff reported no injuries.

2 **Minor injury** - The victim received minor injuries that may have been treated at the facility, or treated at the facility with a possible recommendation for a non-inmate victim to consult with his/her physician.

3 **Moderate injury** - The victim received more serious injuries that generally require treatment at an outside hospital, or, in the case of non-inmate victims, treatment by their own physicians. Moderate injuries are not judged life-threatening.

4 **Major injury** - The victim received injuries that are life-threatening, requiring emergency medical treatment at an outside hospital.

5 **Fatal injury** - The victim received injuries resulting in loss of life.

Example One: ATL: **SB4** – “Staff-**S**” victim, with the weapon being a “sharp object-**B**”, and “major injuries-**4**” sustained.

Example Two: ATL: **OF1** – “Other-**O**” victim with the weapon being “fists/hands-**F**”, and “no injury-**1**” sustained.

Referrals for Prosecution (RFP). For this system to provide accurate data, it is imperative that Special Investigative Supervisors (SIS) and Special Investigative Agents (SIA) refer assaults for prosecution and record the data in section 25 of the incident report. This is a separate field; the DHO keys either accepted or declined for prosecution by the Assistant U.S. Attorney in the screens for:

- Add Hearings/Findings.
- Update Status After Procedural Hearing.
- Update Hearing/Findings.
- Execute/Unexecute Sanctions.

The SIS or SIA documents this under “Other Facts” in section 25 of the incident report (e.g., RFP.: **A** for accepted or RFP.: **D** for declined).

Table 1. PROHIBITED ACTS AND AVAILABLE SANCTIONS

GREATEST SEVERITY LEVEL PROHIBITED ACTS

- 100 Killing.
- 101 Assaulting any person, or an armed assault on the institution's secure perimeter (a charge for assaulting any person at this level is to be used only when serious physical injury has been attempted or accomplished).
- 102 Escape from escort; escape from any secure or non-secure institution, including community confinement; escape from unescorted community program or activity; escape from outside a secure institution.
- 103 Setting a fire (charged with this act in this category only when found to pose a threat to life or a threat of serious bodily harm or in furtherance of a prohibited act of Greatest Severity, e.g., in furtherance of a riot or escape; otherwise the charge is properly classified Code 218, or 329).
- 104 Possession, manufacture, or introduction of a gun, firearm, weapon, sharpened instrument, knife, dangerous chemical, explosive, ammunition, or any instrument used as a weapon.
- 105 Rioting.
- 106 Encouraging others to riot.
- 107 Taking hostage(s).
- 108 Possession, manufacture, introduction, or loss of a hazardous tool (tools most likely to be used in an escape or escape attempt or to serve as weapons capable of doing serious bodily harm to others; or those hazardous to institutional security or personal safety; e.g., hacksaw blade, body armor, maps, handmade rope, or other escape paraphernalia, portable telephone, pager, or other electronic device).
- 109 (Not to be used).
- 110 Refusing to provide a urine sample; refusing to breathe into a Breathalyzer; refusing to take part in other drug-abuse testing.
- 111 Introduction or making of any narcotics, marijuana, drugs, alcohol, intoxicants, or related paraphernalia, not prescribed for the individual by the medical staff.

- 112 Use of any narcotics, marijuana, drugs, alcohol, intoxicants, or related paraphernalia, not prescribed for the individual by the medical staff.
- 113 Possession of any narcotics, marijuana, drugs, alcohol, intoxicants, or related paraphernalia, not prescribed for the individual by the medical staff.
- 114 Sexual assault of any person, involving non-consensual touching by force or threat of force.
- 115 Destroying and/or disposing of any item during a search or attempt to search.
- 196 Use of the mail for an illegal purpose or to commit or further a Greatest category prohibited act.
- 197 Use of the telephone for an illegal purpose or to commit or further a Greatest category prohibited act.
- 198 Interfering with a staff member in the performance of duties most like another Greatest severity prohibited act. This charge is to be used only when another charge of Greatest severity is not accurate. The offending conduct must be charged as "most like" one of the listed Greatest severity prohibited acts.
- 199 Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons most like another Greatest severity prohibited act. This charge is to be used only when another charge of Greatest severity is not accurate. The offending conduct must be charged as "most like" one of the listed Greatest severity prohibited acts.

AVAILABLE SANCTIONS FOR GREATEST SEVERITY LEVEL PROHIBITED ACTS

- A. Recommend parole date rescission or retardation.
- B. Forfeit and/or withhold earned statutory good time or non-vested good conduct time (up to 100%) and/or terminate or disallow extra good time (an extra good time or good conduct time sanction may not be suspended).
 - B.1. Disallow ordinarily between 50% and 75% (27-41 days) of good conduct time credit available for year (a good conduct time sanction may not be suspended).
- C. Disciplinary segregation (up to 12 months).

- D. Make monetary restitution.
- E. Monetary fine.
- F. Loss of privileges (*e.g.*, visiting, telephone, commissary, movies, recreation).
- G. Change housing (quarters).
- H. Remove from program and/or group activity.
- I. Loss of job.
- J. Impound inmate's personal property.
- K. Confiscate contraband.
- L. Restrict to quarters.
- M. Extra duty.

HIGH SEVERITY LEVEL PROHIBITED ACTS

- 200 Escape from a work detail, non-secure institution, or other non-secure confinement, including community confinement, with subsequent voluntary return to Bureau of Prisons custody within four hours.
- 201 Fighting with another person.
- 202 (Not to be used).
- 203 Threatening another with bodily harm or any other offense.
- 204 Extortion; blackmail; protection; demanding or receiving money or anything of value in return for protection against others, to avoid bodily harm, or under threat of informing.
- 205 Engaging in sexual acts.
- 206 Making sexual proposals or threats to another.
- 207 Wearing a disguise or a mask.

- 208 Possession of any unauthorized locking device, or lock pick, or tampering with or blocking any lock device (includes keys), or destroying, altering, interfering with, improperly using, or damaging any security device, mechanism, or procedure.
- 209 Adulteration of any food or drink.
- 210 (Not to be used).
- 211 Possessing any officer's or staff clothing.
- 212 Engaging in or encouraging a group demonstration.
- 213 Encouraging others to refuse to work, or to participate in a work stoppage.
- 214 (Not to be used).
- 215 (Not to be used).
- 216 Giving or offering an official or staff member a bribe, or anything of value.
- 217 Giving money to, or receiving money from, any person for the purpose of introducing contraband or any other illegal or prohibited purpose.
- 218 Destroying, altering, or damaging government property, or the property of another person, having a value in excess of \$100.00, or destroying, altering, damaging life-safety devices (e.g., fire alarm) regardless of financial value.
- 219 Stealing; theft (including data obtained through the unauthorized use of a communications device, or through unauthorized access to disks, tapes, or computer printouts or other automated equipment on which data is stored).
- 220 Demonstrating, practicing, or using martial arts, boxing (except for use of a punching bag), wrestling, or other forms of physical encounter, or military exercises or drill (except for drill authorized by staff).
- 221 Being in an unauthorized area with a person of the opposite sex without staff permission.
- 222 (Not to be used).
- 223 (Not to be used).

- 224 Assaulting any person (a charge at this level is used when less serious physical injury or contact has been attempted or accomplished by an inmate).
- 225 Stalking another person through repeated behavior which harasses, alarms, or annoys the person, after having been previously warned to stop such conduct.
- 226 Possession of stolen property.
- 227 Refusing to participate in a required physical test or examination unrelated to testing for drug abuse (e.g., DNA, HIV, tuberculosis).
- 228 Tattooing or self-mutilation.
- 229 Sexual assault of any person, involving non-consensual touching without force or threat of force.
- 296 Use of the mail for abuses other than criminal activity which circumvent mail monitoring procedures (e.g., use of the mail to commit or further a High category prohibited act, special mail abuse; writing letters in code; directing others to send, sending, or receiving a letter or mail through unauthorized means; sending mail for other inmates without authorization; sending correspondence to a specific address with directions or intent to have the correspondence sent to an unauthorized person; and using a fictitious return address in an attempt to send or receive unauthorized correspondence).
- 297 Use of the telephone for abuses other than illegal activity which circumvent the ability of staff to monitor frequency of telephone use, content of the call, or the number called; or to commit or further a High category prohibited act.
- 298 Interfering with a staff member in the performance of duties most like another High severity prohibited act. This charge is to be used only when another charge of High severity is not accurate. The offending conduct must be charged as "most like" one of the listed High severity prohibited acts.
- 299 Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons most like another High severity prohibited act. This charge is to be used only when another charge of High severity is not accurate. The offending conduct must be charged as "most like" one of the listed High severity prohibited acts.

AVAILABLE SANCTIONS FOR HIGH SEVERITY LEVEL PROHIBITED ACTS

- A. Recommend parole date rescission or retardation.
- B. Forfeit and/or withhold earned statutory good time or non-vested good conduct time up to 50% or up to 60 days, whichever is less, and/or terminate or disallow extra good time (an extra good time or good conduct time sanction may not be suspended).
 - B.1 Disallow ordinarily between 25% and 50% (14-27 days) of good conduct time credit available for year (a good conduct time sanction may not be suspended).
- C. Disciplinary segregation (up to 6 months).
- D. Make monetary restitution.
- E. Monetary fine.
- F. Loss of privileges (*e.g.*, visiting, telephone, commissary, movies, recreation).
- G. Change housing (quarters).
- H. Remove from program and/or group activity.
- I. Loss of job.
- J. Impound inmate's personal property.
- K. Confiscate contraband.
- L. Restrict to quarters.
- M. Extra duty.

MODERATE SEVERITY LEVEL PROHIBITED ACTS

- 300 Indecent Exposure.
- 301 (Not to be used).
- 302 Misuse of authorized medication.

- 303 Possession of money or currency, unless specifically authorized, or in excess of the amount authorized.
- 304 Loaning of property or anything of value for profit or increased return.
- 305 Possession of anything not authorized for retention or receipt by the inmate, and not issued to him through regular channels.
- 306 Refusing to work or to accept a program assignment.
- 307 Refusing to obey an order of any staff member (may be categorized and charged in terms of greater severity, according to the nature of the order being disobeyed, e.g. failure to obey an order which furthers a riot would be charged as 105, Rioting; refusing to obey an order which furthers a fight would be charged as 201, Fighting; refusing to provide a urine sample when ordered as part of a drug-abuse test would be charged as 110).
- 308 Violating a condition of a furlough.
- 309 Violating a condition of a community program.
- 310 Unexcused absence from work or any program assignment.
- 311 Failing to perform work as instructed by the supervisor.
- 312 Insolence towards a staff member.
- 313 Lying or providing a false statement to a staff member.
- 314 Counterfeiting, forging, or unauthorized reproduction of any document, article of identification, money, security, or official paper (may be categorized in terms of greater severity according to the nature of the item being reproduced, e.g., counterfeiting release papers to effect escape, Code 102).
- 315 Participating in an unauthorized meeting or gathering.
- 316 Being in an unauthorized area without staff authorization.
- 317 Failure to follow safety or sanitation regulations (including safety regulations, chemical instructions, tools, MSDS sheets, OSHA standards).
- 318 Using any equipment or machinery without staff authorization.

- 319 Using any equipment or machinery contrary to instructions or posted safety standards.
- 320 Failing to stand count.
- 321 Interfering with the taking of count.
- 322 (Not to be used).
- 323 (Not to be used).
- 324 Gambling.
- 325 Preparing or conducting a gambling pool.
- 326 Possession of gambling paraphernalia.
- 327 Unauthorized contacts with the public.
- 328 Giving money or anything of value to, or accepting money or anything of value from, another inmate or any other person without staff authorization.
- 329 Destroying, altering, or damaging government property, or the property of another person, having a value of \$100.00 or less.
- 330 Being unsanitary or untidy; failing to keep one's person or quarters in accordance with posted standards.
- 331 Possession, manufacture, introduction, or loss of a non-hazardous tool, equipment, supplies, or other non-hazardous contraband (tools not likely to be used in an escape or escape attempt, or to serve as a weapon capable of doing serious bodily harm to others, or not hazardous to institutional security or personal safety) (other non-hazardous contraband includes such items as food, cosmetics, cleaning supplies, smoking apparatus and tobacco in any form where prohibited, and unauthorized nutritional/dietary supplements).
- 332 Smoking where prohibited.
- 333 Fraudulent or deceptive completion of a skills test (*e.g.*, cheating on a GED, or other educational or vocational skills test).
- 334 Conducting a business; conducting or directing an investment transaction without staff authorization.

- 335 Communicating gang affiliation; participating in gang related activities; possession of paraphernalia indicating gang affiliation.
- 336 Circulating a petition.
- 396 Use of the mail for abuses other than criminal activity which do not circumvent mail monitoring; or use of the mail to commit or further a Moderate category prohibited act.
- 397 Use of the telephone for abuses other than illegal activity which do not circumvent the ability of staff to monitor frequency of telephone use, content of the call, or the number called; or to commit or further a Moderate category prohibited act.
- 398 Interfering with a staff member in the performance of duties most like another Moderate severity prohibited act. This charge is to be used only when another charge of Moderate severity is not accurate. The offending conduct must be charged as "most like" one of the listed Moderate severity prohibited acts.
- 399 Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons most like another Moderate severity prohibited act. This charge is to be used only when another charge of Moderate severity is not accurate. The offending conduct must be charged as "most like" one of the listed Moderate severity prohibited acts.

AVAILABLE SANCTIONS FOR MODERATE SEVERITY LEVEL PROHIBITED ACTS

- A. Recommend parole date rescission or retardation.
- B. Forfeit and/or withhold earned statutory good time or non-vested good conduct time up to 25% or up to 30 days, whichever is less, and/or terminate or disallow extra good time (an extra good time or good conduct time sanction may not be suspended).
 - B.1 Disallow ordinarily up to 25% (1-14 days) of good conduct time credit available for year (a good conduct time sanction may not be suspended).
- C. Disciplinary segregation (up to 3 months).
- D. Make monetary restitution.
- E. Monetary fine.

F. Loss of privileges (e.g., visiting, telephone, commissary, movies, recreation).

G. Change housing (quarters).

H. Remove from program and/or group activity.

I. Loss of job.

J. Impound inmate's personal property.

K. Confiscate contraband.

L. Restrict to quarters.

M. Extra duty.

LOW SEVERITY LEVEL PROHIBITED ACTS

400 (Not to be used).

401 (Not to be used).

402 Malingering, feigning illness.

403 (Not to be used).

404 Using abusive or obscene language.

405 (Not to be used).

406 (Not to be used).

407 Conduct with a visitor in violation of Bureau regulations.

408 (Not to be used).

409 Unauthorized physical contact (e.g., kissing, embracing).

498 Interfering with a staff member in the performance of duties most like another Low severity prohibited act. This charge is to be used only when another charge of Low severity is not accurate. The offending conduct must be charged as "most like" one of the listed Low severity prohibited acts.

- 499 Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons most like another Low severity prohibited act. This charge is to be used only when another charge of Low severity is not accurate. The offending conduct must be charged as “most like” one of the listed Low severity prohibited acts.

AVAILABLE SANCTIONS FOR LOW SEVERITY LEVEL PROHIBITED ACTS

- B.1 Disallow ordinarily up to 12.5% (1-7 days) of good conduct time credit available for year (to be used only where inmate found to have committed a second violation of the same prohibited act within 6 months); Disallow ordinarily up to 25% (1-14 days) of good conduct time credit available for year (to be used only where inmate found to have committed a third violation of the same prohibited act within 6 months) (a good conduct time sanction may not be suspended).
- D. Make monetary restitution.
- E. Monetary fine.
- F. Loss of privileges (e.g., visiting, telephone, commissary, movies, recreation).
- G. Change housing (quarters).
- H. Remove from program and/or group activity.
- I. Loss of job.
- J. Impound inmate’s personal property.
- K. Confiscate contraband
- L. Restrict to quarters.
- M. Extra duty.

Table 2. ADDITIONAL AVAILABLE SANCTIONS FOR REPEATED PROHIBITED ACTS WITHIN THE SAME SEVERITY LEVEL

Prohibited Act Severity Level	Time Period for Prior Offense (same code)	Frequency of Repeated Offense	Additional Available Sanctions
Low Severity (400 level)	6 months	2nd offense	1. Disciplinary segregation (up to 1 month). 2. Forfeit earned SGT or non-vested GCT up to 10% or up to 15 days, whichever is less, and/or terminate or disallow extra good time (EGT) (an EGT sanction may not be suspended).
		3rd or more offense	Any available Moderate severity level sanction (300 series).
Moderate Severity (300 level)	12 months	2nd offense	1. Disciplinary segregation (up to 6 months). 2. Forfeit earned SGT or non-vested GCT up to 37 1/2% or up to 45 days, whichever is less, and/or terminate or disallow EGT (an EGT sanction may not be suspended).
		3rd or more offense	Any available High severity level sanction (200 series).
High Severity (200 level)	18 months	2nd offense	1. Disciplinary segregation (up to 12 months). 2. Forfeit earned SGT or non-vested GCT up to 75% or up to 90 days, whichever is less, and/or terminate or disallow EGT (an EGT sanction may not be suspended).
		3rd or more offense	Any available Greatest severity level sanction (100 series).
Greatest Severity (100 level)	24 months	2nd or more offense	Disciplinary Segregation (up to 18 months).

Elements of Prohibited Acts

- I. Elements of Prohibited Acts:** Elements of prohibited acts are the definitions of the conduct which constitutes commission of the prohibited acts. Elements are facts which must be present in order to prove the commission of a prohibited act. There are specific facts which constitute or make up each prohibited act that must be established in the record before you can find guilt or commission of the act.

Elements consist of four or five categories (depending on the offense) which must be present in order to prove commission of the prohibited act. They are:

- A. Subject:** The inmate accused of committing the prohibited act must be properly identified and described in the "description of the incident" and in the "specific evidence relied upon." Normally, the name and register number is sufficient.
- B. Time:** Usually described as the day and hour the incident occurred.
- C. Location:** The place or places the offense was committed. Gives notice of what to defend and establishes our right to regulate the inmate's conduct.
- D. Act:** The description of the actions or conduct of the inmate which constitute the commission of the specific prohibited act. *****This is the most significant element and presents the most problems in definition.***
- E. Victim:** Must be described and identified in those instances where the prohibited act or offense is against another person. An assault requires a victim. Failing to provide a urine sample does not.

II. Elements Determine What Offense is to be Charged

- A. Description:** The description of the incident on the incident report.
 - 1. Staff must describe in factual terms what they observed, heard, tasted or smelled.
 - 2. Section 11 must contain all elements of prohibited acts.
 - 3. This description provides the Wolff notice requirement.

Elements of Offense

<i>Code</i>	<i>Offense</i>	<i>Elements</i>
100	Killing.	Deprive of life.
101	Assaulting any person, or an armed assault on the institution's secure perimeter (a charge for assaulting any person at this level is to be used only when serious physical injury has been attempted or accomplished).	An attempt or threat to do violence to another; includes battery, or the unconsented touching of another.
102	Escape from escort; escape from any secure or non-secure institution, including community confinement, escape from unescorted community program or activity; escape from outside a secure institution.	Escape - departure from custody without permission or authority or before official release.
103	Setting a fire (charged with this act in this category only when found to pose a threat to life or a threat of serious bodily harm or in furtherance of a prohibited act of Greatest severity, e.g., in furtherance of a riot or escape; otherwise, the charge is properly classified Code 218 or 329).	To cause ignition or combustion; includes destructive burning.
104	Possession, manufacture, or introduction of a gun, firearm, weapon, sharpened instrument, knife, dangerous chemical, explosive, ammunition, or any instrument used as a weapon.	Possess - to have on one's person or under one's dominion or control. Manufacture - to make or fashion something. Introduce - to bring in from outside the institution; any of the objects listed.
105	Rioting.	Participates with two or more other persons in a disturbance for purpose of preventing or coercing official action with actual or threats of violence.
106	Encouraging others to riot.	Promotes or urges others to participate in a riot.
107	Taking Hostage(s).	To take someone captive with threats to kill or harm if demands are not met.
108	Possession, manufacture, introduction, or loss of a hazardous tool (tools most likely to be used in an escape or escape attempt or to serve as weapons capable of doing serious bodily harm to others; or those hazardous to institutional security or personal safety; (e.g., hacksaw blade, body armor, maps, handmade rope, or other escape paraphernalia, portable telephone, pager or other electronic device).	Possess - to have on one's person or under one's dominion or control Manufacture - to make or fashion something. Introduce - to bring in from outside the institution; any of the objects listed.

<i>Code</i>	<i>Offense</i>	<i>Elements</i>
110	Refusing to provide a urine sample; refusing to breath into a Breathalyzer; refusing to take part on other drug abuse testing.	Voluntary or intentional decision not to provide a specimen of urine for testing; a stated inability to provide a urine sample within reasonable time, normally two hours. Voluntary or intentional decision not to breathe into a Breathalyzer for alcohol or other intoxicant testing. Voluntary or intentional decision not to take part in other alcohol/intoxicant testing/drug abuse testing as required.
111	Introduction or making of any narcotics, marijuana, drugs, alcohol, intoxicants, or related paraphernalia, not prescribed for the individual by the medical staff.	Introduce - to bring in from outside the institution. Making- to make or construct any narcotics, drugs, alcohol, intoxicants, or related paraphernalia.
112	Use of any narcotics, marijuana, drugs, alcohol, intoxicants, or related paraphernalia, not prescribed for the individual by the medical staff.	To be seen using or testing positive for the use of any narcotics, marijuana, drugs, alcohol, intoxicants, that has not been prescribed for the individual by the medical staff.
113	Possession of any narcotics, marijuana, drugs, alcohol, intoxicants, or related paraphernalia, not prescribed for the individual by the medical staff.	To possess means to have on one's person or under one's dominion or control of the hard contraband identified.
114	Sexual assault of any person, involving non-consensual touching by force or threat of force.	Sexual assault includes the unconsented intimate physical contact with another person which includes an attempt or threat of physical violence.
115	Destroying and/or disposing of any item during a search or attempt to search.	Includes throwing items away from staff or flushing items when a search is being conducted or attempting to conduct a search.
196	Use of the mail for an illegal purpose or to commit or further a Greatest category prohibited act.	Use of the mail to commit or aid in the commission of a crime or a Greatest category prohibited act.
197	Use of the telephone for an illegal purpose or to commit or further a Greatest category prohibited act.	Using the telephone to commit or aid in the commission of a crime or a Greatest category prohibited act.
198	Interfering with a staff member in the performance of duties most like another Greatest category prohibited act. This charge is to be used only when another charge of Greatest severity is not accurate. The offending conduct must be charged as "most like" one of the listed Greatest categories prohibited acts.	Interfering - to hamper, hinder, or disturb a staff member performing his duties. Must be related to 100 level activities.

<i>Code</i>	<i>Offense</i>	<i>Elements</i>
199	Conduct which disrupts or interferes with the orderly running of the institution or the Bureau of Prisons most like another Greatest category prohibited act. This charge is to be used only when another charge of Greatest severity is not accurate. The offending conduct must be charged as "most like" one of the listed Greatest categories prohibited acts.	Any act of Greatest Severity level which is not specifically described in other prohibited acts listed above, but which causes disorder or turmoil in the operation of a prison.

<i>Code</i>	<i>Offense</i>	<i>Elements</i>
200	Escape from a work detail, non-secure institution, or other non-secure confinement, including community confinement, with subsequent voluntary return to the Bureau of Prisons custody within four hours.	Departure from custody without permission or authority or before release; includes failure to follow instructions of staff as to the limits of the activity; or commission of an act which prevents the inmate from returning at the time and place prescribed (such as an arrest based on probable cause), and the inmate voluntarily returns within four hours.
201	Fighting with another person.	A "fight" is a hostile, physical or verbal encounter or engagement between two or more persons.
203	Threatening another with bodily harm.	A communication of an intent to inflict physical or other harm on any person or on property.
204	Extortion, blackmail, protection, demanding or receiving money or anything of value in return for protection against others, to avoid bodily harm, or under threat of informing	To obtain anything of value from another induced by the wrongful use of actual or threatened force, violence or fear.
205	Engaging in sexual acts.	Take part in intimate physical contact with self or another.
206	Making sexual proposals or threats to another.	Offering or encouraging another to engage in a sexual act or in intimate physical contact; a threat is a communicated intent to inflict physical or other harm on the person or on property.
207	Wearing a disguise or a mask.	Have on one's face or other portion of one's body an item which conceals, changes or alters identity or appearance.
208	Possession of any unauthorized locking device, or lock pick, or tampering with or blocking any lock device (includes keys), or destroying, altering, interfering with, improperly using, or damaging any security device, mechanism, or procedure.	Possess - have on one's person or have under one's control. Tamper - to meddle with for purpose of altering, destroying, etc.
209	Adulteration of any food or drink.	Adulterate - to debase or make impure.
211	Possessing any officer's or staff clothing.	Possess - have on one's person or have under one's control or dominion.

<i>Code</i>	<i>Offense</i>	<i>Elements</i>
212	Engaging in or encouraging a group demonstration.	To participate or promote others to participate with two or more persons gathering together to support a cause.
213	Encouraging others to refuse to work, or to participate in a work stoppage.	To promote or urge other inmates to refuse to work or participate in a work stoppage.
216	Giving or offering an official or staff member a bribe, or anything of value.	Bribe - giving something of value to persuade or induce favor or action.
217	Giving money to, or receiving money from, any person for the purpose of introducing contraband or any other illegal or prohibited purpose.	Contraband - anything an inmate is not permitted to have in his possession, i.e., not issued or not authorized to retain.
218	Destroying, altering, or damaging government property, or the property of another person, having a value in excess of \$100.00, or destroying, altering, damaging life-safety devices (e.g., fire alarm) regardless of financial value.	The \$100+ value applies to both government and personal property; otherwise, it is a Code 329 offense.
219	Stealing; theft (including data obtained through the unauthorized use of a communications device, or through unauthorized access to disks, tapes, or computer printouts or other automated equipment on which data is stored).	Stealing - to take or appropriate the property of another without permission or right.
220	Demonstrating, practicing, or using martial arts, boxing (except for use of a punching bag), wrestling, or other forms of physical encounter, or military exercises or drill (except for drill authorized by staff).	"Martial" refers to war or warlike; we prohibit all but punching a bag because this conduct may be mistakenly perceived as fighting or may precipitate disruption or a disturbance. It also encourages militant group behavior which is inconsistent with security.
221	Being in an unauthorized area with a person of the opposite sex without staff permission.	An area may be "unauthorized" because of a written rule, an oral order or direction by staff, or because of circumstances. The "person of the opposite sex" refers to inmates or visitors, not staff. A prohibited act described to cover a situation where two inmates of opposite sex at co-correctional institution are discovered in an inappropriate area, but before there is any evidence of sexual intent or content.

<i>Code</i>	<i>Offense</i>	<i>Elements</i>
224	Assaulting any person (a charge at this level is used when less serious physical injury or contact has been attempted or accomplished by an inmate).	See Code 101. Assault is an attempt or threat to do violence to another and includes battery or the unconsented touching of another.
225	Stalking another person through repeated behavior which harasses, alarms, or annoys the person, after having been previously warned to stop such conduct.	A documented pattern of repeated behavior which harasses, alarms, or annoys a person after being ordered or previously warned to cease such conduct.
226	Possession of stolen property.	To have in one's possession, control, or domain any stolen item(s).
227	Refusing to participate in a required physical test or required examination unrelated to testing for drug abuse (e.g., DNA, HIV, tuberculosis).	Voluntary or intentional decision not to take part in a required physical test or examination unrelated to drug abuse or alcohol testing.
228	Tattooing or self-mutilation.	To put indelible patterns on the skin; to injure, disfigure or make imperfect by removing or irreparably damaging parts of the body (wrist cutting falls within this offense).
229	Sexual assault of any person, involving non-consensual touching without force or threat of force.	Sexual assault includes the unconsented intimate or non-sexual physical contact with another person which does not include a threat of physical violence.
231	Requesting, demanding, pressuring, or otherwise intentionally creating a situation, which causes an inmate to produce, display his/her own court documents for any unauthorized purpose to another inmate.	Requesting, demanding, pressuring, or otherwise intentionally creating a situation, which causes an inmate to produce or display his/her own court documents for any unauthorized purpose to another inmate.
296	Use of the mail for abuses other than criminal activity which circumvent mail monitoring procedures (e.g. use of the mail to commit or further a High category prohibited act, special mail abuse, writing letters in code; directing others to send, sending, or receiving a letter or mail through unauthorized means; sending mail for other inmates without authorization; sending correspondence to a specific address with directions or intent to have the correspondence sent to an unauthorized person.	Use of the mail in violation of the policy on mail regulations which circumvents mail monitoring procedures.

<i>Code</i>	<i>Offense</i>	<i>Elements</i>
297	Use of the telephone for abuses other than criminal activity which circumvent the ability of staff to monitor frequency of telephone use, content of the call, or the number called; or to commit or further a High category prohibited act.	Using the telephone in violation of the policy on telephone regulations which circumvents telephone monitoring procedures.
298	Interfering with a staff member in the performance of duties, most like another High severity prohibited act. This charge is to be used only when another charge of High severity is not accurate. The offending conduct must be charged as "most like" one of the listed High severity prohibited acts.	See Code 198.
299	Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons most like another High Severity prohibited act. This charge is to be used only when another charge of High severity is not accurate. The offending conduct must be charged as "most like" one of the listed High severity prohibited acts.	See Code 199.

<i>Code</i>	<i>Offense</i>	<i>Elements</i>
300	Indecent Exposure.	Indecent means offending against recognized standards of propriety; exposure means to display; non-accidental display of genitals.
302	Misuse of authorized medication.	To use authorized/prescribed medication in a manner contrary to instructions.
303	Possession of money or currency, unless specifically authorized, or in excess of the amount authorized.	Possess - to have on one's person or under one's control.
304	Loaning of property or anything of value for profit or increased return.	To grant temporary use for the purpose of gaining money or an advantage.
305	Possession of anything not authorized for retention or receipt by the inmate, and not issued to him through regular channels.	To possess means to have on one's person or under one's dominion or control; although notice of what constitutes contraband generally is presumed, look to policies, rules, procedures and law to establish where reasonably questioned.
306	Refusing to work or accept a program assignment.	Declining or expressing a determination not to perform assigned tasks; also, includes program assignments like general population and educational classes.
307	Refusing to obey an order of any staff member (may be categorized and charged in terms of greater severity, according to the nature of the order being disobeyed, e.g., failure to obey an order which furthers a riot would be charged as Code 201, (Fighting; refusing to provide a urine sample when ordered would be charged as 110).	Declining or expressing a determination not to follow commands (instructions and restrictions) of a BOP employee and others placed in a position of authority by a BOP employee.
308	Violating a condition of furlough.	To break or fail to follow rules listed on the furlough form.
309	Violating a condition of a community program.	Failure to follow established rules other than those set forth on furlough papers; usually CCC's.
310	Unexcused absence from work or any program assignment.	Not at an assigned place at a certain time.
311	Failing to perform work as instructed by the supervisor.	Similar to 319; use when specific orders of the work supervisor are violated.
312	Insolence towards a staff member.	Contemptuously rude or impertinent in behavior or speech toward a staff member.
313	Lying or providing a false statement to a staff member.	Self-explanatory offense; must disrupt security, order or discipline.

<i>Code</i>	<i>Offense</i>	<i>Elements</i>
314	Counterfeiting, forging or unauthorized reproduction of any document, article of identification, money, security, or official paper (may be categorized in terms of greater severity according to the nature of the item being reproduced; (e.g., counterfeiting release papers to affect escape, Code 102).	Self-explanatory offense as described.
315	Participating in an unauthorized meeting or gathering.	To take part in meeting or gathering of inmates without staff permission.
316	Being in an unauthorized area without staff authorization.	Located in a place that an inmate is forbidden to be in because of orders, policies or established procedures.
317	Failure to follow safety or sanitation regulations (including safety regulations, chemical instructions, tools, MSDS sheets, OSHA standards).	Nonperformance of established rules concerning safety and sanitation.
318	Using any equipment or machinery without staff authorization.	Self-explanatory offense as described.
319	Using any equipment or machinery contrary to instructions or posted safety standards.	Similar to 317; specifically covers use of equipment or machinery.
320	Failing to stand count.	Absent during count or failing to stand up during count.
321	Interfering with the taking of count.	Any action which hampers or inhibits staff from taking a count other than those actions listed in Code 320.
324	Gambling.	To play any game of chance for stakes.
325	Preparing or conducting a gambling pool.	See Code 324; to be used where evidence establishes the inmate is responsible for setting up or running the game of chance.
326	Possession of gambling paraphernalia.	See Code 324; where evidence only shows possession of gambling items, but not used in a game.
327	Unauthorized contacts with the public.	Self-explanatory offense: to be used where an inmate needs permission to contact someone outside the institution.
328	Giving money or anything of value to or accepting money or anything of value from another inmate, or any other person without staff authorization.	Self-explanatory offense as described. See also Code 217 where evidence shows the purpose of giving is for introducing contraband or other illegal purpose.

<i>Code</i>	<i>Offense</i>	<i>Elements</i>
329	Destroying, Altering, or Damaging Government Property, or the Property of Another Person, Having a Value of \$100 or Less.	Self-explanatory offense; see Code 218 for higher severity offense for value more than \$100.
330	Being Unsanitary or Untidy; Failing to Keep One's Person and One's Quarters in Accordance with Posted Standards.	Self-explanatory offense: used where living area is unclean or not maintained in an acceptably clean and tidy manner.
331	Possession, Manufacture, or Introduction of a nonhazardous tool or other Non-Hazardous Contraband (tool not likely to be used in an escape attempt or to serve as a weapon capable of doing serious bodily harm to others, or not hazardous to institutional security or personal safety; other nonhazardous contraband includes such items as food or cosmetics).	Self-explanatory offense; see Code 104 for description of possession, manufacture or introduction. See also Code 108 for greater severity offense.
332	Smoking where prohibited.	Smoking in an area that is designated by policy to be a non- smoking area.
333	Fraudulent or deceptive completion of a skills test (e.g., cheating on a GED, or other education or vocational skills test).	Self-explanatory offense; used when cheating on an educational or vocational test.
334	Conducting a business; conducting or directing an investment transaction without staff authorization.	To direct, engage, carry on an occupation, profession, or trade. Occupation means the person's usual or principal work. A profession usually refers to an occupation which requires extensive education. Trade refers to buying, selling, or exchanging commodities or other items.
335	Communicating gang affiliation; participating in gang related activities; possession of paraphernalia indicating gang affiliation.	Used when an inmate is wearing clothing, items, etc. to show gang affiliation, making hand signals, etc. Use other higher and greater severity codes when behavior involves fighting, assaults, and group demonstrations.
336	Circulating a petition.	Circulating a petition to protest conditions or to effect a change of some sort.
396	Use of the mail for abuses other than criminal activity which do not circumvent mail monitoring; or use of the mail to commit or further a Moderate category prohibited act.	Use of the mail in violation of policy which does not circumvent mail monitoring procedures.
397	Use of telephone for abuses other than illegal activity which do not circumvent the ability of staff to monitor frequency of telephone use, content of the call, or the number called; or to commit or further a Moderate category prohibited act.	Use of the telephone in violation of policy which does not circumvent telephone monitoring procedures.

<i>Code</i>	<i>Offense</i>	<i>Elements</i>
398	Interfering with a Staff Member in the Performance of Duties, Most Like Conduct must be of the Moderate severity nature. This charge is to be used only when another charge of moderate severity is not applicable.	See Code 198.
399	Conduct which Disrupts or Interferes with the Security or Orderly Running of the Institution or the Bureau of Prisons, Most Like Conduct must be of the Moderate severity nature. This charge is to be used only when another charge of moderate severity is not applicable.	See Code 199.

<i>Code</i>	<i>Offense</i>	<i>Elements</i>
402	Malingering, Feigning Illness.	Malingering means to feign illness.
404	Using Abusive or Obscene Language.	Using coarsely insulting, indecent or lewd language.
407	Conduct with a Visitor in Violation of Bureau Regulations.	Inappropriate actions with a visitor after notice of written rule (would include excessive sexual contact short of engaging in a sex act, Code 205).
409	Unauthorized Physical Contact.	Unacceptable physical contact, usually with another inmate; see also Code 205, Engaging in Sexual Acts, and Code 407 for visitor related activities.
498	Interfering with a Staff Member in the Performance of Duties, Most Like Conduct must be of the Low Moderate severity nature. This charge is to be used only when another charge of low moderate severity is not applicable.	See Code 198.
499	Conduct which Disrupts or Interferes with the Security or Orderly Running of the Institution or the Bureau of Prisons, Most Like Conduct must be of the Moderate severity nature. This charge is to be used only when another charge of moderate severity is not applicable.	See Code 199.



Program Statement

OPI: CPD/CPB
NUMBER: P5264.08
DATE: 1/24/2008
SUBJECT: Inmate Telephone
Regulations

"CORRECTED COPY 2/11/2008"

Boxed Bold - Federal Regulation

Regular Type - Implementing Information

1. PURPOSE AND SCOPE

§ 540.100 Purpose and Scope.

a. The Bureau of Prisons extends telephone privileges to inmates as part of its overall correctional management. Telephone privileges are a supplemental means of maintaining community and family ties that will contribute to an inmate's personal development. An inmate may request to call a person of his or her choice outside the institution on a telephone provided for that purpose. However, limitations and conditions may be imposed upon an inmate's telephone privileges to ensure that these are consistent with other aspects of the Bureau's correctional management responsibilities. In addition to the procedures set forth in this subpart, inmate telephone use is subject to those limitations which the Warden determines are necessary to ensure the security or good order, including discipline, of the institution or to protect the public. Restrictions on inmate telephone use may also be imposed as a disciplinary sanction (see 28 CFR part 541).

This Program Statement provides national policy and procedure regarding inmate telephone privileges within Bureau of Prisons (BOP) institutions and contract facilities.

Maintaining pro-social/legal contact with family and community ties is a valuable tool in the overall correctional process. With this objective in mind, the Bureau provides inmates with several means of maintaining such contacts. Primary among these

is written correspondence, supplemented by telephone and visiting privileges.

Although there is no constitutional right for inmates to have unrestricted telephone communication, particularly when alternate methods of communication are readily available, the Bureau provides inmates with telephone access consistent with sound correctional management.

2. **SUMMARY OF CHANGES.** This Program Statement incorporates the following changes:

- References to the Washington v. Reno settlement agreement have been deleted;
- The provision allowing a special extended time frame of 120 days for inmates to file Administrative Remedies related to the telephone charges or credits has been deleted;
- The number of times inmates are allowed to submit proposed changes to their telephone list has been changed from three times per month to once per calendar month; and,
- The requirement that staff forward copies of Institution Supplements to the Central Office, Office of the General Counsel, Litigation Branch has been deleted.
- Adds guidance for inmate use of non-ITS telephones.
- Removes the language requiring Unit staff to approve inmates telephone number request form.
- Provides guidance for inmates administering their own phone lists via TRULINCS.

3. **PROGRAM OBJECTIVES.** The expected results of this program are:

a. All inmates will be afforded the opportunity to maintain family and community contact via the telephone consistent with institution and community safety;

b. Inmates will be responsible for the expense of telephone use; and,

c. All institutions will establish monitoring procedures to preserve the institution's security, orderly management and safety of the community.

4. DIRECTIVES AFFECTED

a. Directive Rescinded

P5264.07 Telephone Regulations for Inmates (1/31/02)

b. Directives Referenced

P1315.07 Inmate Legal Activities (11/5/99)
P1330.16 Administrative Remedy Program (12/31/07)
P1480.05 News Media Contacts (9/21/00)
P4500.05 Trust Fund/Deposit Fund Manual (1/22/07)
P5100.08 Security Designation and Custody Classification Manual (9/12/06)
P5265.11 Correspondence (7/9/99)
P5267.08 Visiting Regulations (5/11/06)
P5270.07 Inmate Discipline and Special Housing Units (12/29/87)
P5360.09 Religious Beliefs and Practices (12/31/04)
P5380.08 Inmate Financial Responsibility Program (8/15/05)
P7331.04 Pretrial Inmates (1/31/03)

c. Rules cited and/or referenced in this Program Statement are contained in 28 CFR part 540, subparts A-B, D, E, and I; 28 CFR part 541, subparts A-B; 28 CFR part 542, subpart B; 28 CFR part 543, subpart B, 28 CFR part 545, subpart B, 28 CFR part 548, and 28 CFR part 551, subpart J.

5. STANDARDS REFERENCED

a. American Correctional Association 4th Edition Standards for Adult Correctional Institutions: 4-4497, 4-4271, 4-4272, and 4-4273

b. American Correctional Association 4th Edition Standards for Adult Local Detention Facilities: 4-ALDF-6A-02, 4-ALDF-6A-05, 4-ALDF-2A-65, 4-ALDF-2A-66, 4-ALDF-5B-11, and 4-ALDF-5B-12

c. American Correctional Association 2nd Edition Standards for the Administration of Correctional Agencies: 2-CO-5D-01

6. INSTITUTION SUPPLEMENT. A local Institution Supplement is required and must include the following information:

- a. The maximum length of telephone calls, ordinarily 15 minutes;
- b. The minimum time frames between completed calls and the maximum number of incomplete call attempts per day;
- c. Telephone access procedures for inmates on "days off" or "evening shift," workers;
- d. Establish procedures for those inmates who exhaust the 300 minutes per calendar month limitation to receive additional minutes for good cause;
- e. Establish procedures when a staff assisted call may be made for good cause, including procedures for Pretrial and Holdover inmates.

The institution will involve the Regional Correctional Programs Administrator in developing the Institution Supplement.

7. PRETRIAL, HOLDOVER, AND/OR DETAINEE PROCEDURES. The procedures contained in this Program Statement apply only to institutions where individual Phone Access Codes (PAC) are utilized.

a. **Pretrial Inmates.** The Public Safety Factor (PSF) Serious Telephone Abuse applies to sentenced inmates and therefore, does not apply to pretrial inmates. However, if institution staff receive information about a pretrial inmate that may jeopardize the security and safety of the institution or community, staff will follow the procedures outlined in Section 13 of this Program Statement.

b. **Holdover Inmates.** Inmates with the PSF Serious Telephone Abuse will not be permitted access to the Inmate Telephone System (ITS), except as provided in § 540.101(e) or § 540.105©.

c. **Detainee Inmates.** A detainee of the Immigration and Customs Enforcement (ICE), denoted by the Admission/Release Status (ARS) code of A-INS, who has completed a federal sentence, may have a PSF of Serious Telephone Abuse. The detainee will not be permitted access to ITS, except as provided in § 540.101(e) or § 540.105(c). If institution staff receive information about an immigration detainee that may jeopardize the security and safety of the institution or community, staff will follow the procedures outlined in Section 13 of this Program Statement.

8. **PROCEDURES.** The Bureau's Inmate Telephone System is a calling system that is available in all institutions operated by the BOP.

To ensure the safety and security of the institution and community, inmates must place all personal telephone calls through the ITS and must not circumvent it via call forwarding, including automatic electronic forwarding or any similar telephone function. Additionally toll-free or credit card calls are not authorized, examples include telephone calls to 1-800, 1-888, 1-877, 1-866, 1-900, 1-976, or to credit card access numbers.

a. **Warden's Authority.**

b. Except as provided in this rule, the Warden shall permit an inmate who has not been restricted from telephone use as the result of a specific institutional disciplinary sanction to make at least one telephone call each month.

Wardens are responsible for implementing and maintaining an inmate telephone program within their institution. In establishing an institution telephone program, Wardens should consider such variables as the size and complexity of the institution. The Warden has the authority to restrict or suspend temporarily an inmate's regular telephone privilege when there is reasonable suspicion that the inmate has acted in a way that would indicate a threat to the institution's good order or security. Wardens may restrict telephone privileges only in accordance with Section 13 of this Program Statement.

Reasonable suspicion exists when facts and circumstances indicate that the inmate is engaged in, or attempting to engage in, criminal or other prohibited behavior using the telephone. The Warden has the authority to restrict or suspend temporarily an inmate's regular telephone privilege when there is a reasonable suspicion that the inmate has acted in a way that threatens the safety, security, or good order of the institution, or the protection of the public. Reasonable suspicion may be based on reliable, confidential information gathered through intelligence that identifies the inmate in question. In determining reasonable suspicion, the available information should reasonably lead a person with correctional experience to suspect the inmate is engaged in criminal or other prohibited behavior using the telephone system.

b. **Telephone List Preparation and Submission.**

§ 540.101. Procedures.

a. Telephone List Preparation. An inmate telephone call shall ordinarily be made to a number identified on the inmate's official telephone list. This list ordinarily may contain up to 30 numbers. The Associate Warden may authorize the placement of additional numbers on an inmate's telephone list based on the inmate's individual situation, e.g., size of family.

(1) During the admission and orientation process, an inmate who chooses to have telephone privileges shall prepare a proposed telephone list. At the time of submission, the inmate shall acknowledge that, to the best of the inmate's knowledge, the person or persons on the list are agreeable to receiving the inmate's telephone call and that the proposed calls are to be made for a purpose allowable under Bureau policy or institution guidelines.

(2) Except as provided in paragraph (a)(3) of this section, telephone numbers requested by an inmate ordinarily will be placed on the inmate's telephone list. When an inmate requests the placement of numbers for persons other than for immediate family or those persons already approved for the inmate's visiting list, staff ordinarily will notify those persons in writing that their numbers have been placed on the inmate's telephone list. The notice advises the recipient that the recipient's number will be removed from the list if the recipient makes a written request to the institution, or upon the written request of the inmate, or as provided in paragraph (a)(3) of this section.

(3) The Associate Warden may deny placement of a telephone number on an inmate's telephone list if the Associate Warden determines that there is a threat to institution security or good order, or a threat to the public. Any disapproval must be documented in writing to both the inmate and the proposed recipient. As with concerns about any correctional issue, including any portion of these telephone regulations, an inmate may appeal the denial through the administrative remedy procedure (see 28 CFR part 542). The Associate Warden will notify the denied recipient that he or she may appeal the denial by writing to the Warden within 15 days of the receipt of the denial.

Inmates with access to TRULINCS workstations which provide access to telephone list updates shall generate and maintain their lists using TRULINCS. These inmates will not be required to submit a Telephone Number request form (BP-505). All other inmates shall follow the process below.

An inmate who wishes to have telephone privileges must submit a Telephone Number Request form (BP-505) to unit staff. Their telephone list ordinarily may contain up to 30 telephone numbers.

Inmates may submit telephone numbers for any person they choose, including numbers for courts, elected officials and members of the news media. Attorneys may be included on an inmate's telephone list with the understanding that such calls are subject to monitoring.

Unit staff shall sign the Telephone Number Request form verifying the identity of the inmate that has hand delivered the form to the staff member. Once an inmate submits a list, it will be processed within seven calendar days.

Once unit staff sign the BP-505, it must be forwarded to ITS staff in a secure manner and within the time frames established by this Program Statement. At no time will the BP-505 be returned to the inmate or handled by another inmate.

This time frame may be extended if the total number of changes is so large that unit staff or ITS staff cannot process them and still perform their normal duties.

c. Telephone List Modifications.

b. Telephone List Update. Each Warden shall establish procedures to allow an inmate the opportunity to submit telephone list changes on at least a quarterly basis.

An inmate may submit proposed changes to his or her telephone list once per calendar month, unless staff determine that the inmate has a demonstrated need for more prompt communication.

In determining if a more frequent change is to be permitted due to a demonstrated need for prompt communication, staff must rely on their professional judgment and evaluate each request on a case-by-case basis.

Placing additional numbers (above 30) on an inmate's telephone list is within the Associate Warden's discretion. While 30 numbers should meet the need of most inmates, there may be isolated situations when additional numbers may be warranted.

For example, an inmate who has a large family may wish to place additional family members on the telephone list. Additional numbers may also be warranted for an inmate who wishes to place both work and home telephone numbers for his or her spouse and children.

c. Telephone Access Codes. An inmate may not possess another inmate's telephone access code number. An inmate may not give his or her telephone access code number to another inmate, and is to report a compromised telephone access code number immediately to unit staff.

d. Call Blocking. The Associate Warden has authority to block a number on an inmate account in a case-by-case determination. In such cases, the Associate Warden or designee must notify the inmate of an administrative block, ordinarily within five calendar days following the denial or removal of the number.

For security reasons, the Associate Warden also has the authority to block telephone numbers from being called by all inmates at their institution. Examples of numbers blocked institution wide include, but are not limited to gambling lines, etc.

Requests for BOP-wide blocking of telephone numbers shall be approved by the Chief, Intelligence Section or his/her designee.

Telephone numbers for Victims and Witnesses (as defined in 28 C.F.R. § 151-151 a. & b.) that have requested notification regarding an inmate at a Bureau facility will be blocked at the facility where the inmate is housed.

e. Call Blocking by Recipient. In ITS, the call recipient has the capability through his or her home telephone to deny and/or block further telephone calls from the inmate. A voice prompt will direct the called party through the process. This capability is available for direct-dial and collect calls from an inmate.

Once the recipient blocks a telephone number, the recipient can unblock the number only when he or she sends a written request for reinstatement. To ensure the called party's identity, the request for reinstatement must include a copy of a recent telephone bill. Trust Fund staff will process this request expeditiously.

In the event that staff receive a telephonic request from a call recipient to have his/her telephone number blocked from an inmate's telephone list, unit staff may request that the ITS

technician place a temporary suspension, not to exceed 20 calendar days, on an inmate calling that specific telephone number. Unit staff should take reasonable steps to verify the identity of the person making the request (e.g., by calling the number to be blocked). The call recipient should be informed that the blocking of the number is temporary, and that he or she must submit a prompt written request to make it permanent.

Copies of written documentation, blocking or unblocking a telephone number (at the recipient's request or the Associate Warden's discretion) must be forwarded to Trust Fund staff in the Financial Management office.

f. Limitations on Inmate Telephone Calls.

d. Placement and Duration of Telephone Call. The placement and duration of any telephone call is subject to availability of inmate funds. Ordinarily, an inmate who has sufficient funds is allowed at least three minutes for a telephone call. The Warden may limit the maximum length of telephone calling based on the situation at that institution (e.g., institution population or usage demand).

e. Exception. The Warden may allow the placement of collect calls for good cause. Examples of good cause include, but are not limited to, inmates who are new arrivals to the institution, including new commitments and transfers; inmates confined at Metropolitan Correctional Centers, Metropolitan Detention Centers, or Federal Detention Centers; pretrial inmates; inmates in holdover status; inmates who are without funds (see § 540.105(b)); and in cases of family emergencies.

The Warden will establish the maximum length of telephone calls, ordinarily 15 minutes. A warning tone ordinarily will be provided approximately one minute before the call is disconnected. This applies to both debit and collect telephone calls. The Warden determines the interval waiting period between completed telephone calls.

Inmates with ITS accounts are limited to 300 minutes per calendar month. This applies to all inmates with an ITS account in Bureau institutions, and may be used for any combination of collect or direct-dial calls at the inmate's discretion. Ordinarily, the inmates will be allowed an extra 100 minutes per month in November and December.

Inmates who exhaust their 300 minute limitation may be provided additional minutes, at the Warden's discretion, for good cause.

The 300 minutes per calendar month limitation does not apply to an inmate's ability to place unmonitored legal telephone calls.

g. **Hours of Telephone Operation.** The hours of telephone operation begin at 6:00 AM and end no later than 11:30 PM. Inmate telephones will not be available from at least 11:30 PM to 6:00 AM. Inmate access to telephones will normally be limited during the following times, Monday through Friday, not including holidays:

7:30 am until 10:30 am; and,
12:30 pm until after 4:00 pm count.

Inmates are expected to be at their work assignments and must not use the telephone during their work hours. For inmates who work varied work shifts, at local discretion, institutions may leave one telephone per unit available for inmates on "days off," or "evening shift" such as food service workers, UNICOR workers, etc. Staff are encouraged to take disciplinary action if an inmate leaves his or her work assignment to place a telephone call(s) without the appropriate institution staff member's prior approval.

These restrictions should not be imposed in Pretrial/Holdover institutions or Pretrial/Holdover Units where inmates are not required to work and generally have more need for telephone access during the day to prepare for trial.

h. **Complaints.** As with any complaint regarding any correctional issue, an inmate may use procedures outlined in the Program Statement on the Administrative Remedy Program to resolve disputes concerning their telephone privileges, e.g. lists, access, accounts, and services.

9. **MONITORING OF INMATE TELEPHONE CALLS.**

§ 540.102 Monitoring of Inmate Telephone Calls.

The Warden shall establish procedures that enable monitoring of telephone conversations on any telephone located within the institution, said monitoring to be done to preserve the security and orderly management of the institution and to protect the public. The Warden must provide notice to the inmate of the potential for monitoring. Staff may not monitor an inmate's properly placed call to an attorney. The Warden shall notify an inmate of the proper procedures to have an unmonitored telephone conversation with an attorney.

As part of the admission and orientation process, inmates will be advised of the procedures for placing monitored and unmonitored telephone calls.

The notification to inmates will be documented on the Acknowledgment of Inmate form (BP-408) and then filed in the inmate Central File.

In addition, a notice will be placed, in both Spanish and English, at all monitored telephone locations within the institution advising the user that all conversations from that telephone are subject to monitoring and that using the telephone constitutes consent to this monitoring. A notice will advise inmates to contact their unit team to request an unmonitored attorney telephone call. The SIS must ensure that the notice(s) is placed at all monitored telephone locations within the institution.

Requests for information (e.g., subpoenas) on monitored calls should be processed in accordance with the Program Statement Recorded Inmate Telephone Conversations, Requests for Production. The Bureau does not allow inmates to send or receive facsimile communications.

10. INMATE TELEPHONE CALLS TO ATTORNEYS.

§ 540.103 Inmate Telephone Calls to Attorneys.

The Warden may not apply frequency limitations on inmate telephone calls to attorneys when the inmate demonstrates that communication with attorneys by correspondence, visiting, or normal telephone use is not adequate.

The Bureau provides each inmate with several methods to maintain confidential contact with his or her attorney. For example:

- inmate-attorney correspondence is covered under the special mail provisions;
- private inmate-attorney visits are provided; and,
- the inmate is afforded the opportunity to place an occasional unmonitored call to his or her attorney.

Based on these provisions, frequent confidential inmate-attorney calls should be allowed only when an inmate demonstrates that communication with his or her attorney by other means is not adequate. For example, when the inmate or the inmate's attorney can demonstrate an imminent court deadline (see the Program Statements Inmate Correspondence or Inmate Legal Activities).

Staff are to make reasonable efforts to verify unmonitored calls placed on an inmate's behalf are to an attorney's office. Inmates are responsible for the expense of unmonitored attorney telephone calls. When possible, it is preferred that inmates place unmonitored legal calls collect. Third-party or three-way calls are not authorized.

11. INMATE USE OF NON-ITS TELEPHONES (Non-attorney calls). On rare occasion, during times of crisis, staff designated by the Warden may find the need to allow inmates to place telephone calls outside the Inmate Telephone System. These calls should be placed on telephones that are set to record the conversation and shall follow the guidelines detailed below.

a. Additional monitored non-ITS telephones must be operated as follows:

(1) Inmates using the telephones must have read and signed the Acknowledgment of Inmate form (BP-408) indicating their understanding that telephone calls on that device are subject to monitoring;

(2) A notice must be placed, in both English and Spanish, above or near the telephone indicating that all calls are subject to monitoring, and that using the telephone constitutes consent to such monitoring. The notice should also indicate that the telephone is for inmate use only. Staff are not permitted to use the telephone because staff telephone calls may not be monitored;

(3) The telephone must be placed in a secure area (e.g., a locked office);

(4) The telephone must be set to record telephone calls;

(5) Staff coordinating the call shall notify the SIS staff in writing via email that telephone call was placed and shall include the following; and

- The date/time, telephone number, and name of the person being called
- The name and register number of the inmate placing the call
- A brief reason for the call.

(6) SIS staff shall be responsible for inputting this data into the recording system to ensure the call recording can identify the inmate on the telephone. This data must be entered within seven calendar days.

b. Institutional Authorization Procedures for Additional Monitored Non-ITS Telephones (Non-ITS)

PS 5360, expressly provides for an additional monitored inmate telephone located in the Chapel area. As such, the procedures in this document for authorizing that single telephone do not apply. These procedures apply, rather, to additional monitored inmate telephones beyond the single additional telephone permitted by the religious policy (e.g., telephones located in the Lieutenant's office, the Unit Team office).

The following procedures must be followed when requesting additional monitored inmate telephones:

(1) The Warden shall send a request to the Regional Director for consideration and identify the extraordinary reasons justifying the need for additional telephones; and

(2) If approved by the Regional Director, written notification of approval shall be provided to the Warden and the Administration Division's Trust Fund Branch (TFB) staff for processing.

12. RESPONSIBILITY FOR INMATE MISUSE OF TELEPHONES.

§ 540.104 Responsibility for inmate misuse of telephones.

The inmate is responsible for any misuse of the telephone. The Warden shall refer incidents of unlawful inmate telephone use to law enforcement authorities. The Warden shall advise an inmate that violation of the institution's telephone regulations may result in institutional disciplinary action (See part 541, subpart B)

Inmates violating this policy may be subject to disciplinary action pursuant to 28 CFR part 541, subpart B, and the policy on Inmate Discipline.

§540.105 Expenses of Inmate Telephone Use.

a. An inmate is responsible for the expenses of inmate telephone use. Such expenses may include a fee for replacement of an inmate's telephone access code that is used in an institution which has implemented debit billing for inmate calls. Each inmate is responsible for staying aware of his or her account balance through the automated process provided by the system. Third party billing and electronic transfer of a call to a third party are prohibited.

b. The Warden shall provide at least one collect call each month for an inmate who is without funds. An inmate without funds is defined as an inmate who has not had a trust fund account balance of \$6.00 for the past 30 days. The Warden may increase the number of collect calls based upon local institution conditions (e.g., institution population, staff resources, and usage demand). To prevent abuses of this provision (e.g., inmate shows a pattern of depleting his or her commissary funds prior to placing collect calls), the Warden may impose restrictions on the provisions of this paragraph b.

c. The Warden may direct the government to bear the expense of inmate telephone use or allow a call to be made collect under compelling circumstances such as when an inmate has lost contact with his family or has a family emergency.

13. **TELEPHONE RESTRICTIONS IMPOSED BY THE WARDEN.** Inmates may be subject to telephone restrictions imposed by the Warden to protect the safety, security, and good order of the institution, as well as to protect the public. Telephone restrictions imposed under the authority of this section are separate and apart from telephone restrictions imposed by the UDC or DHO following formal and completed inmate discipline proceedings.

Inmates with telephone restrictions are still entitled to place at least one telephone call per month, unless also under a sanction of telephone restriction the UDC or DHO imposed.

a. **Authorized Circumstances.** Inmates may be subject to telephone restrictions under this section in the following two circumstances:

(1) Public Safety Factor (PSF). An inmate whose current offense, prior history, or threat characteristics indicate a propensity to abuse telephone privileges will be assigned the PSF - Serious Telephone Abuse. If an inmate is assigned the PSF for Serious Telephone Abuse (see the Security Designation and Custody Classification Manual), a telephone restriction is authorized. Telephone restrictions imposed under these circumstances are discretionary and necessary to ensure the institution's safety, security, good order and/or to protect the public. When deemed necessary, the inmate's Unit Manager will ordinarily recommend this type of restriction to the Warden for final decision making.

Upon his/her initial commitment or redesignation, an inmate with a PSF for Serious Telephone Abuse will not be authorized use of the ITS until classified by the unit team. Inmates identified at their initial classification as requiring telephone restrictions will not be permitted access to the ITS until after the final review by the Warden.

(2) Pending Investigation or Disciplinary Action for Possible Telephone Abuse. If an inmate is pending an investigation or disciplinary action for possible telephone abuse, a partial or total telephone restriction is authorized. Telephone restrictions imposed under these circumstances are discretionary and necessary to ensure the institution's safety, security, or good order, and/or to protect the public. When deemed necessary, the Special Investigative Supervisor's office will ordinarily recommend this type of restriction. Any telephone restriction recommended by the SIS office may only be imposed with the Warden's approval, in accordance with the procedures outlined in this section.

b. Procedures for Imposing or Removing Telephone Restrictions. The following procedures must be followed when imposing, removing, or renewing, a telephone restriction under this section:

(1) The appropriate staff member recommends a telephone restriction to the Warden by completing the Request for Telephone Restriction form (BP-740.052). The recommending staff member should describe briefly the reason for recommending a telephone restriction, as well as the extent of the proposed restriction.

For example, staff may recommend reducing an inmate's telephone use to 100 minutes per month rather than a total restriction, if such a restriction would sufficiently protect the safety, security, or good order of the institution, or protect the public;

(2) The Warden will review the recommendation and either approve, modify, or deny the restriction. If the Warden approves a restriction, such decision must be based on the conclusion that it is necessary to protect the institution's safety, security, or good order, or to protect the public;

(3) If the Warden approves a telephone restriction, a copy of the completed form should be provided to the inmate, the Trust Fund Office, and placed in Section 3 of the inmate's Central File;

(4) Telephone restrictions imposed by the Warden due to a PSF for Serious Telephone Abuse must be reviewed at least every six months, ordinarily in conjunction with the inmate's Program Review, to determine if the restriction should continue or be modified. A decision to continue a current telephone restriction imposed under this section requires no further action, but must be documented in the Program Review Report.

Any proposed change to a current telephone restriction must be made according to these procedures, and requires the Warden's approval. If appropriate, an inmate's telephone privileges can be gradually restored, based on demonstrated responsibility documented by the inmate's Unit Team or other staff;

(5) Telephone restrictions imposed pending an investigation or pending disciplinary action for possible telephone abuse are limited to a period of 30 days. If an additional 30 day period is required to complete either the investigation or disciplinary process, the Warden must re-authorize the restriction using these procedures. Specifically, the Warden's approval must be obtained on another Request for Telephone Restriction form (BP-740.052). Unless re-authorized in this manner, Trust Fund staff will obtain the Warden's approval for reinstatement or continued restrictions every 30 days.

Each subsequent restriction period is limited to 30 days. Staff should make every effort to complete investigations and disciplinary proceedings for possible telephone abuse within the first 30 day period of the telephone restriction;

(6) Inmates with telephone restrictions under this section are still entitled to place at least one telephone call per month, unless also under a sanction of telephone restriction the UDC or DHO imposed following formal, and completed, inmate discipline proceedings. Ordinarily, such telephone calls are placed through the inmate telephone system, not by staff; and,

(7) Inmates may challenge telephone restrictions imposed under this section through the Administrative Remedy Program.

/s/
Harley G. Lappin
Director



Program Statement

OPI: HSD/HPB
NUMBER: P6360.01
DATE: 1/15/2005
SUBJECT: Pharmacy Services

1. **PURPOSE AND SCOPE.** To guide a broad spectrum of operations in the Bureau pharmacy program.

2. **PROGRAM OBJECTIVES.** The expected results of this program are:

An inmate's access to quality, necessary, cost-effective pharmaceutical care will be provided.

3. **DIRECTIVES REFERENCED**

P4100.04 BOP Acquisitions Manual (5/19/04)
P4500.04 Trust Fund/Warehouse/Laundry Manual (12/15/95)
P6010.02 Health Services Administration (1/15/05)
P6013.01 Health Services Quality Improvement Program
(1/15/05)
P6027.01 Health Care Provider Credential Verification,
Privileges, and Practice Agreement Program
(1/15/05)
P6031.01 Patient Care (1/15/05)
P6090.01 Health Information Management (1/15/05)
P6340.04 Psychiatric Services (1/15/05)
P6541.02 Over-the-Counter Medications (11/17/04)

21 CFR Chapter II, Part 1300

4. **STANDARDS REFERENCED**

a. American Correctional Association 4th Edition Standards for Adult Correctional Institutions: 4-4378 (M), 4-4379 (M), 4-4397 (M), 4-4401 (M), and 4-4402

b. American Correctional Association 3rd Edition Standards for Adult Local Detention Facilities: 3-ALDF-4E-17 **(M)**, 3-ALDF-4E-12-1 **(M)**, 3-ALDF-4E-18, 3-ALDF-4E-39, 3-ALDF-4E-42, and 3-ALDF-4E-43

5. **STAFFING.** Each institution will maintain a pharmacy directed by a professionally and legally qualified pharmacist and staffed by a sufficient number of trained personnel, in keeping with the size of the institution and the scope of medical services provided.

Consultant/contract pharmacists, if used, will provide the Health Services Administrator (HSA) with a written monthly report of pharmacy activities. The HSA will maintain this report on file.

6. **STANDARDS OF OPERATION.** Each institution will provide space, equipment, and supplies for the professional and administrative functions of the pharmacy to promote patient safety through the proper storage, preparation, dispensing, and administration of drugs.

a. The Chief Pharmacist will maintain up-to-date reference materials (computer-accessible or print), specifically:

- (1) Drug Information reference (e.g. Facts and Comparisons, American Hospital Formulary Service, MicroMedex, etc.);
- (2) Pharmacology/Pharmacotherapeutics reference (e.g. Goodman/Gilman's, Applied Therapeutics, Harrison's Internal Medicine, Dipiro);
- (3) Drug Interactions;
- (4) Drug Information for Patients; and
- (5) Internet access in the pharmacy.

b. Equipment in the pharmacy will include at least:

- (1) Adequate computer equipment including GroupWise access;
 - The Chief Pharmacist will be the owner of the institution pharmacy mailbox with proxy rights to a designee for leave purposes.
- (2) A refrigerator dedicated to and appropriately labeled, for the storage of medications and biologicals;
- (3) Adequate lighting and ventilation;
- (4) A sink with running water;

- (5) A system to monitor temperature control that meets compendia/Food and Drug Administration (FDA) standards. Medications are considered distressed and must be discarded if temperature controls are not maintained over a 48 hour time frame.
 - There must be either daily temperature control documentation or an electronic temperature control system that alerts staff to values outside standards.
- (6) The Bureau Correctional Institution Pharmacy System (CIPS) computer software system.

c. **Key Control And Accountability.** Only pharmacy staff (pharmacists and pharmacy technicians) and the off-shift duty provider will have keys to the pharmacy. Only the Chief Pharmacist and/or pharmacist-designee(s) will have access to the main stock of controlled substances.

- The key ring for the off-shift duty provider will have a key to the pharmacy, but not to the pharmacy storeroom or any key which would allow them access to main stock medications.
- Access to the controlled substances sub-stock is limited to the staff member who is responsible for the shift inventory of sub-stock. This staff member will sign the "sub-stock inventory certification sheet" for each shift.
- Each institution will develop local procedures for conducting the sub-stock shift inventory.
- The use of automated medication administration cabinets (e.g. SureMed, Pyxis) negates the need for shift inventories and proof of use (disposition) sheets for controlled substances, needles, and syringes.

7. **PROCEDURES AND OPERATIONAL PRACTICES.** The Chief Pharmacist will develop and maintain written procedures and operational practices pertaining to pharmaceutical services, in concert with the medical staff and, as appropriate, with representatives of other disciplines.

a. **Pharmacy and Therapeutics (P&T) Committee.** The Clinical Director (CD) will establish a Pharmacy and Therapeutics (P&T) Committee that will meet at least quarterly. Membership of the P&T Committee will be defined in institution policy and will

include, at a minimum, representatives from the medical (physician), psychiatric (if available), pharmacy, dental, and nursing staff, as well as Health Services Administration.

(1) **Meetings.** The required minimum agenda for this committee meeting includes:

- Determine what drugs on the National Formulary will be available locally;
- Determine what strengths and dosage forms will be available locally;
- Determine if any drugs on the National Formulary should be restricted further (i.e. designated as "Pill Line");
- Discuss and evaluate errors in prescribing, dispensing, and administering medications in the institution;
- Discuss and evaluate Adverse Drug Reactions that occur in the institution;
- Approve Drug Use Evaluations (DUEs) used in the institution;
- Review DUE data and track problems over time;
- Review changes in the National Formulary;
- Present drug information;
- Recommend that a "Request for Addition to Formulary" be completed for a specific drug; and
- Discuss Quality Improvement measures.

(2) **Minutes.** Local P&T Meeting minutes will be made available to all institution health services staff. An electronic copy of the minutes will be sent to the BOP Chief Pharmacist within 30 days of the end of the quarter. Institution P&T Committee Meeting minutes will contain:

- Date of meeting;
- List of attendees;
- Reading and acceptance of previous minutes;
- Policy and Procedure Review;
- Review of past issues;
- Formulary issues;
- Investigational drugs;
- Drug related research projects;
- Monitoring and enforcement activities;
- Medication recalls;
- Medication errors;
- Adverse drug reactions and monitoring;
- Quality Improvement activities;
- Pharmacy interventions;
- Floor stock medications;

- Drug Utilization Review;
- Completed DUEs;
- DUE proposals; and
- Overall and specific pharmaceutical cost trends.

b. **National Drug Formulary.** Each institution will use the Bureau's National Drug Formulary. The National Formulary will be issued following the publication of the National Pharmacy and Therapeutics and Formulary Meeting Minutes.

Authorization for use of items not in the national formulary must be requested from the Medical Director through the BOP Chief Pharmacist, using the "Non-Formulary Drug Authorization" form (BP-S802).

- The form will be completed and sent to the Chief Pharmacist for each medication order requesting a non-formulary item.
- The completed "Non-Formulary Drug Authorization" form will be sent electronically upon receipt of this module from the pharmacy software vendor.
- Emergency requests may be made by phone.
- The institution pharmacy will maintain a copy of all approved and disapproved non-formulary requests. The original will be filed in section 6 of the Health Record.
- Prescribing a formulary medication against a restriction placed on it during the National P&T meeting requires a non-formulary drug authorization unless otherwise stated in the formulary.
- A new non-formulary request is not required for intra-system transfers who previously had a non-formulary medication approved. The approved form, located in Section 6 of the Health Record, will be copied and retained in the pharmacy of the current institution.

The "Request for Addition to Formulary" form (BP-S804) must be used to request a drug item be added to the National Formulary. This form should be routed through the local P&T Committee and then sent to the BOP Chief Pharmacist.

- All requests will be reviewed at the annual National Pharmacy and Therapeutics (P&T) Meeting.

- Recommendations for formulary deletions, restrictions, etc., must also be submitted on this form.

Updates to the National Formulary will be published regularly following National P&T review. Comments and suggestions should be directed to the BOP Chief Pharmacist.

Unless indicated as a non-substitutable product (i.e. negative formulary), proprietary (brand) names are used as examples for identification purposes only. All institutions will use the least expensive A/B rated generic when possible. "Dispense as Written" (DAW) orders will be processed as a non-formulary medication order and must include appropriate justification from the prescriber.

The institution P&T Committee may use a local formulary based on the National Formulary.

- A local formulary can only be more restrictive than the National Formulary. Medications may not be added or restrictions removed.
- Local formularies will be made available to all of the institution's health services staff and consultants.

c. **Training and Education.** Pharmacy personnel will participate in relevant education programs, including orientation of new employees, in-service, and outside continuing education. The institution Chief Pharmacist will maintain participation documentation.

All health care providers performing pill line, physicians, and pharmacy technicians will complete pharmacy orientation as part of the Health Services Orientation. These staff will have documentation in their credentialing file indicating they have completed the Pharmacy Services Orientation, before beginning work in the Pharmacy.

- After completing this orientation, these providers can **administer** medication doses, or **distribute** medication orders to inmates, but they cannot **dispense** medication orders.

d. **Patient Safety.** The institution Chief Pharmacist will ensure there are written procedures in place for patient safety and the control, accountability, and distribution of drugs. These procedures will be reviewed/revised annually, as necessary, and are subject to local negotiation.

- All drugs will be labeled adequately, including the addition of accessory or cautionary statements, and the expiration date, if appropriate.
- Discontinued and outdated drugs and containers with worn, illegible, or missing labels will be returned to the pharmacy for proper disposition.

e. **Dispensing Medication Orders.** Before a medication order is dispensed, a pharmacist will review it prospectively for the following:

- drug/drug interactions;
- drug/disease interactions;
- drug/food interactions;
- therapeutic duplications;
- over use/under use;
- allergies;
- therapeutic appropriateness;
- appropriate dose;
- appropriate route of administration;
- duration of therapy;
- adverse drug reactions;
- proper laboratory monitoring;
- appropriate clinical outcomes; and
- provide the final check of the medication order to ensure it contains the correct drug.

The label will contain the correct directions and patient information pursuant to the medication order. Proper cautionary statements will be included on the vial.

Any items which are changed must be documented in the Health Record justifying the need for the change.

A practitioner with "independent status" (i.e. physician or pharmacist) must check each medication order before it is dispensed to the patient, ensuring the appropriate prospective review has been completed.

- Although dentists have "independent status" they are not allowed to dispense as a majority of medications fall outside the scope of their practice.
- Health care providers, such as MLPs, EMTs, nurses, medical technicians, and pharmacy technicians do not have independent status. As such, health care providers will not be assigned Pharmacist duties.

- (1) In order to satisfy these requirements during evenings and weekends, each institution will use a "drug administration cabinet". This may be as sophisticated as a Pyxis Medstation, a Meditrol, or a Documed Station, or as simple as a locked, metal cabinet in the urgent care room, or a designated area in the pharmacy.
 - This cabinet will contain a limited number and supply of urgently needed drugs that are commonly used after hours in the institution.
 - These drugs should be in single dose or single day packages but in some cases may be in a three day supply to ensure coverage for weekends and holidays.
 - These medications will be pre-labeled with standard directions and the name and strength of the drug.
- (2) When the after-hours health care provider needs to give an inmate a medication, the following options will be used.
 - (a) The inmate may be placed on pill line to be administered single doses of the prescribed medication until a medication order can be dispensed.
 - (b) The health care provider may access the off-shift drug administration cabinet, remove a pre-packaged container, and:
 - write the inmate's name and number;
 - the date;
 - the provider's name;
 - the expiration date on the package; and
 - distribute it to the inmate.
 - (c) A medication order will be written for the pharmacist to review retrospectively.
 - (d) A log book will be maintained for the off-shift medication cabinet, to record drugs and doses that are distributed from the cabinet. The log book will contain:
 - date;
 - time;

- inmate name;
 - register number;
 - drug;
 - amount dispensed; and
 - provider's signature.
- (e) Where an automated medication distribution system is used as the drug administration cabinet, the distribution/administration report will provide documentation of these occurrences in lieu of the log book.
- (f) The next working day, the pharmacist will:
- enter the order into the pharmacy computer;
 - review the order retrospectively;
 - fill the order for the amount written less the dose(s) distributed or administered by the health care provider;
 - provide a "final check" of the medication order; and
 - dispense the completed order to the inmate.
- (g) The practice agreement for MLPs will state specifically they may access the drug administration cabinet and pill line stock. **Pill line stock will not be bulk stock containers.** Local procedures will specify the system in use at each institution. Pill line stock may include:
- unit-dose packaging appropriately labeled;
 - medication order labeled vials with a seven to 30 day supply of the inmate's medication;
 - heat-sealed blister cards filled or checked by the pharmacist; and
 - automated medication administration cabinets (e.g. Pyxis Envoy).
- (h) Non-pharmacist health care providers will not have access to bulk stock packages that would permit them to actually dispense a medication order or administer doses.
- The only exception to the above is described in Section 9.c.

- (3) Inmates transferring to other institutions in/out of the Bureau will have their medications listed on a Medical Summary of Federal Prisoner/Alien in Transit (BP-S659) form, which is delivered in a timely manner to the pharmacy for processing.

f. **Inspections.** The Chief Pharmacist or designee will conduct at least quarterly inspections of all areas where medications are dispensed, administered, or stored. The Chief Pharmacist will maintain a record of quarterly inspections for at least two years.

g. **Drug Monitoring.** The Chief Pharmacist will provide drug monitoring services keeping with each patient's needs, FDA and manufacturer recommendations, and practices recommended through drug information references.

8. **DEA CONTROLLED SUBSTANCES**

a. **Applicability of Federal Law.** Drug Enforcement Administration (DEA) controlled substances are drugs and drug products under jurisdiction of the Controlled Substances Act of 1970 and are divided into five schedules (I, II, III, IV, and V).

- Nothing in this chapter will be construed as authorizing or permitting any person to engage in any act that is not authorized or permitted under existing federal laws, or that does not meet regulations published in the most recent edition of Title 21, Chapter II, of the Code of Federal Regulations (21 CFR, Part 1300 to end).

Application for a new or renewed registration number under the Controlled Substances Act includes the following procedures.

- (1) To obtain an initial DEA registration number, each Chief Pharmacist will complete and forward a New Application for Registration form (DEA-224), to the BOP Chief Pharmacist for certification.
 - For renewal, Form DEA-224a will be sent to the Central Office, Attn: Chief Pharmacist, BOP, 320 First Street NW, Washington, DC 20853 for certification (there is no cost for new or renewal registration).
 - The BOP Chief Pharmacist will verify fee exemption status.
 - The phone number for DEA registration and renewal is 1-800-882-9539.

- (2) "Registration Classification" on Form DEA-224 will be checked as "hospital/clinic." There will be only one official registration number for each Bureau institution.
- (3) The DEA registration number will be used only for official federal business.
- (4) The BOP Chief Pharmacist will forward the certified form to the DEA, which will send the new or renewed registration number to the institution.
- (5) The institution Chief Pharmacist will complete and submit these forms. At institutions without a pharmacist on staff, the HSA will retain this responsibility.

b. **Responsibility.** The Chief Pharmacist will be the responsible authority for all DEA controlled substances. The main stock will be kept locked and stored in a vault or safe to which only the Chief Pharmacist and/or pharmacist designee(s) has the combination or keys.

- The HSA will ensure that a duplicate set of keys or combinations of all vaults and safes in the HSU will be sealed in separate envelopes, plainly marked with contents, and filed in the Warden's or security officer's vault or safe.
- The Chief Pharmacist or designee must be present for any inventories, inspections, searches, or shakedowns of the storeroom, vaults or safes.
- The Chief Pharmacist will ensure that all combinations or locks to main stock vaults or safes storing DEA controlled substances are changed:
 - (1) At transfer, reassignment, or termination of applicable HSU administrative or pharmacy personnel, or
 - (2) When unusual circumstances dictate increased internal control measures.

c. **Purchasing/Receiving.** Purchase orders for controlled substances will be prepared by a designated employee without the knowledge or assistance of inmates.

- Controlled substances will be stocked in single-dose packaging when available.

- The Chief Pharmacist will establish a proper system of security for their receipt.

d. **Records.** The pharmacist will maintain adequate main stock records for each controlled substance. Headings will indicate:

- sub-stock unit;
- date;
- record number/P.O. number;
- quantity received;
- quantity issued to sub-stock; and
- balance on hand.

Sub-stock records address the administration of medication on medical/nursing units or on pill line. Sub-stock will have records maintained for proof of use for each DEA controlled substance on hand. Each proof of use sheet will contain:

- name and strength of drug;
- date issued;
- amount issued;
- pharmacy control number;
- department location (if applicable);
- date and amount returned;
- date and time of administration;
- name and number of inmate;
- dosage administered;
- corresponding medication order number (CIPS);
- signature of person administering; and
- balance on hand.

The completed proof of use sheet will be returned to the pharmacy, and kept with controlled substances records.

At the start of each shift, staff will conduct a complete DEA sub-stock inventory in accordance with local procedures. If the inventory is not correct, staff will attempt to resolve the differences immediately.

- The staff member discovering the discrepancy will write a memo to the Chief Pharmacist explaining the event.
- If the discrepancy is not resolved, the Chief Pharmacist or designee, will notify the HSA, to ensure that its possible cause(s) is identified.
- For institutions using a computer driven medication station, the pharmacist will generate sub-stock discrepancy reports daily.

- The pharmacist will review and sign these reports and file them with the controlled substance main stock records.

The staff member completing the sub-stock inventory certification sheet will return it to the pharmacy. The pharmacist will review and retain the forms for two years prior to the last federally mandated biennial inventory. The change of shift record will include:

- date and time of the count;
- signature of off going and oncoming staff; and
- exact quantity of all controlled substances on hand in that sub-stock at that time.

The use of automated medication administration cabinets (e.g. SureMed, Pyxis) negates the necessity for shift inventories, proof of use sheets, and disposition sheets for DEA controlled substances, needles, and syringes.

All inventories and listings in the controlled substance records will be exact using tablets, capsules, vials, etc., not in units of bottles or other bulk measurements.

When a Chief Pharmacist permanently departs from an institution, he/she and the oncoming Chief Pharmacist (or the acting Chief Pharmacist or the HSA) will complete an immediate inventory of:

- main stock controlled substances;
- perpetual inventory;
- purchase orders;
- federal order forms;
- receivers; and
- invoices.

When a newly selected Chief Pharmacist arrives at an institution, he/she and the HSA will complete a similar inventory immediately.

Controlled substances in sub-stocks are to be used for administration only. Any dispensing of controlled substances will be accomplished through main stock.

e. **Security.** The DEA, per 21 CFR Part 1301.72, requires safeguarding and accounting for all controlled substances.

- Main stock controlled substances will be stored in a vault or safe.
- Sub-stock controlled substances will be stored in a stationary, approved steel cabinet with two separately key-locked steel doors, a safe with a keyed padlock, or an automated medication cabinet (e.g., SureMed, Pyxis).
- When a controlled substance requires refrigeration, the medication must be secured in a locked refrigerator or in a locked drawer within the refrigerator.

f. **Biennial Inventory.** The Controlled Substances Act requires each registrant to make a complete and accurate record of all controlled substance stock on hand every two years. The Chief Pharmacist will complete the biennial inventory on the date mandated by federal law (May 1 of odd-numbered years for institutions registered before May 1, 1971; for institutions registered after May 1, 1971, every two years on the date of the initial inventory).

The actual taking of the inventory will not vary more than four days from the biennial inventory date. The Chief Pharmacist will maintain the inventory with the controlled substances records. The inventory record must:

- (1) List the registrant's name, address, and DEA registration number;
- (2) Indicate the date and time the inventory is taken (i.e., opening or close of business);
- (3) Be signed by the person or persons responsible for taking the inventory;
- (4) Be maintained at the location appearing on the registration certificate for at least two years prior to the last federally mandated inventory;
- (5) List the name of each controlled substance;
- (6) List the dosage form and unit strength of each controlled substance;
- (7) List the number of units in each container of each controlled substance;
- (8) List the number of each container of each controlled substance;

- (9) Separate Schedule II controlled substances from all others; and
- (10) Include main stock and all sub-stocks.

g. **Additional Auditing Requirements.** Corrected or amended medication orders may not be processed for controlled substances. A new medication order will be written.

Any record keeping error will be corrected by the person who made the error by drawing one line through the error, writing an explanation directly below, and initialing. Errors may not be "blacked out."

- (1) **Theft or Loss.** Any incident of theft or loss must be documented by the individual discovering it. A copy of the documentation will be sent to the Chief Pharmacist for review and filing. The Chief Pharmacist will in turn send a memo to the HSA, with a copy to the Warden. The Warden will notify the DEA via DEA Form 106.

In accordance with 21 CFR 1301.76(b), the DEA Form 106 must contain:

- (a) Name and address of the facility;
- (b) DEA Registration Number;
- (c) Date of the theft;
- (d) The fact that the local police department was notified;
- (e) The type of theft;
- (f) A list of the symbols or cost code (if any) used by the facility; and
- (g) A list of the controlled substance(s) missing.

The report is made in triplicate. The pharmacy keeps the original copy, and forwards the other two copies to the Regional DEA Office.

- (2) **Controlled Substances Inventory Team.** The HSA will designate, in writing, a Health Services supervisor as Chair of the Quarterly Controlled Substances Inventory Team. The Controlled Substances Inventory Team will consist of the chair and at least one other supervisor.
 - The Chief Pharmacist will be a technical advisor and will be present during the inventory, but may not be a team member.

- The team will conduct a quarterly count of all main stock controlled substances.
 - Each team member will then sign the Quarterly Controlled Substance Audit Team Certificate form to be filed with the controlled substance records. A copy of this form does not need to be sent to the BOP Chief Pharmacist.
 - This count may be done at anytime within the time frame of the quarter.
- (3) **Quarterly Report.** At the end of each quarter, the Chief Pharmacist will complete a Quarterly Report for Narcotics and other Controlled Substances inventory form. An electronic copy will be submitted to the BOP Chief Pharmacist within 30 days of the end of the quarter. Each quarterly report will reflect the usage pertaining to the following dates (variance from these dates will not be allowed):
- 1st Quarter = October 1 to December 31
 - 2nd Quarter = January 1 to March 31
 - 3rd Quarter = April 1 to June 30
 - 4th Quarter = July 1 to September 30

h. **Disposal.** The Chief Pharmacist or designee will dispose of controlled substances when necessary, in the manner prescribed by the DEA in 21 CFR 1307.21.

This disposal will be accomplished in one of two methods:

- (1) Request from the Special Agent-in-Charge at the Regional DEA Office, in writing, that permission be granted for the facility to self-dispose of controlled substances; or
- (2) By transfer to a DEA approved vendor that is certified to dispose of controlled substances.

9. **DISPENSING AND ADMINISTRATION**

a. **Definitions**

- (1) **Administration** is defined as providing one dose of medication to be applied or consumed immediately.
- (2) **Dispensing** is defined as placing multiple doses in a properly labeled container for use over a period of

time, i.e., filling a medication order. Dispensing is the act of prospectively reviewing the medication order as described in Section 7.e.

- Only pharmacists may dispense medications.

- (3) **Distribution** is defined as physically handing a filled medication order or OTC (over-the-counter) product to an inmate. Any health care provider who has completed the Pharmacy Training and Orientation Program can distribute or administer medications.

b. **Prescribing Restrictions.** All DEA controlled substances, psychiatric medications, and other medications restricted to "physician use only" by the BOP National Formulary prescribed by a MLP must be countersigned by a staff physician before the medication order may be processed and dispensed.

- Local policies will address a process of review in the absence of a full time physician.

c. **Options During the Absence of the Pharmacist.** During periods when a pharmacist is not available (e.g. annual refresher training, CME, etc.) one of the following options will be used:

- **Contracting (Amend Existing Contract).**
Incorporate a requirement for pharmacist back-up coverage in the comprehensive medical contract.
- **Contracting (Establish Separate Contract).**
Contract with a firm that is capable of providing temporary pharmacist services using open market procurement procedures or existing Federal Supply Schedules (FSS). The Bureau of Prisons Acquisition Policy (BPAP), Part 37, stipulates various requirements relating to using private sector temporary services. The Chief Executive Officer and Regional Director must approve a written justification prior to the acquisition.
- **Interagency Agreements.** Establish an interagency agreement with another government agency (e.g., VA or DOD) to provide pharmacist coverage on an "as needed" basis.
- **TDY Within the Bureau.** Arrange/plan for TDY pharmacist assistance from another Bureau institution with more than one pharmacist.

- **Use PHS Officers from Outside the Bureau.** Secure TDY assistance from PHS officers assigned to other government agencies. (The institution needing the pharmacist is responsible for travel, lodging, and per diem.) The BOP Chief Pharmacist can help identify pharmacists in this category **or** use a PHS inactive reserve corps officer through the BOP-PHS liaison and the PHS Inactive Reserve Coordinator.
- **Obtain the Services of a Second Pharmacist** for larger institutions, particularly those with a satellite camp or FDC. In this situation, pharmacy hours of operation could be extended, vacations, training, and sick leave covered, and quality services can be maintained.

Physicians are responsible for diagnosing and treating patients and may only dispense medications in emergency situations. All of the above options must be actively pursued and exhausted. Institutions without the services of a pharmacist for more than three days will contact the Medical Director for guidance.

d. **Administration.** To ensure that medications are actually consumed at pill line, the following procedures will be followed.

- The pharmacist or pharmacy technician will prepare a CIPS-generated Medication Administration Record (MAR) sheet for use at pill line.
- The person administering the medication will identify each inmate by examining two forms of identification (e.g. photo ID, DOB, registration number, name, etc.) of anyone who arrives to receive medication.
- The inmate will swallow the dose of medication and the water while being observed directly by the staff member.
- The inmate will then show the empty dose cup and water cup to the person conducting pill line before disposal.
- The inmate will be asked to open his/her mouth to show that the medication has not been "cheeked" before leaving the window.
- Medications should not be removed from their packaging or labeling until being administered.

- The administration of medication should be documented in the MAR after it is completed.
- When an inmate refuses to take a prescribed pill line or inpatient administered medication, or is a "no-show," that decision will be documented on the MAR.

Unless local institution security requirements dictate otherwise, medication dispensing will be in light-resistant, moisture-resistant vials and not plastic bags.

e. **DEA Controlled Substances.** The physician or dentist will initiate or countersign the medication order in the health record which will include:

- controlled substance;
- DEA number;
- strength;
- directions; and
- duration of therapy.

Health Services staff may accept a verbal order, but the physician or dentist must countersign the verbal order within 24 hours or by the close of the next workday.

Schedule II controlled substance orders will be valid for 72 hours only (with the exception of detox medications). Schedule III, IV, and V orders may be written for not more than 30 days.

- An exception to this requirement is when DEA controlled substances are used for seizure disorders unless otherwise restricted in the BOP National Formulary. Then, medication orders can be written for up to 180 days.
- All orders for controlled substances used for hypnotic purposes will be valid for not more than seven days.
- All orders for substances (Schedule II - V) used in cases of chronic or terminal illness resulting in unremitting pain not likely to abate in the short term and drugs used for narcolepsy or ADHD will be valid for up to 30 days.
- All such orders must be supported by on-going documentation in the health record or inpatient record.

Accountability. Consistent with 21 CFR, Part 1300, Section 1304.4, the Chief Pharmacist will maintain all records pertaining to purchase, administration, inventory, and audits for at least two years prior to the most recent federal biennial inventory. These records will be kept in a vault, safe, or other secure area. No other items may be stored with DEA controlled substances or their records.

- Daily, the pharmacist will generate a CIPS controlled substance report. The report will be maintained with other controlled substance documentation in accordance with DEA regulations.

Controlled substances that are damaged, expired, or retrieved from inmates through R/D will be segregated in the safe from other controlled substances.

- A separate "Outdate & Confiscate" log will serve as an inventory as long as the medications are in the facility.

Ordinarily, all DEA controlled substances taken by mouth will be crushed or administered in liquid form. Pharmacy staff will issue crushed medication in single dose packaging already crushed.

f. **Restricted Drugs.** Restricted drugs are defined as non-DEA controlled drugs that may be abused or those that require Directly Observed Therapy (DOT). Ordering, prescribing, dispensing, and accounting for restricted medications will be in accordance with local and Bureau procedures.

The Chief Pharmacist will ensure that medication is not subject to excessive exposure to heat, light, and moisture.

All restricted drugs to be taken by mouth will be administered in single doses, and swallowed in the presence of an employee to ensure that the medication is ingested, in accordance with the procedures outlined in Section 9.d.

g. **Medication Orders.** A medication order is any medication a health care practitioner orders for a patient. A health care practitioner will reevaluate each medication order prior to writing a renewal order.

- All medication orders for chronic care medications are valid for no more than 30 days with five refills totaling 180 days (**except for controlled substances unless used for seizure control and other medications specifically restricted by the BOP National Formulary**).
- When available, the Prescriber Order Entry (POE) will be used to prescribe and process all medication orders. This does not negate the need for the pharmacist to have access to the patient's health record.
- Local CIPS data will be backed up each work day.

All institutions will have a system(s) in place for ensuring medications not picked up by inmates are logged into the CIPS computer system along with documentation in the inmate health record.

The distribution of drug samples within the institution is prohibited.

A staff physician will review and cosign orders written by consultant physicians.

- The pharmacy department will have a means to identify the signatures of all staff practitioners authorized to prescribe.

When an inmate is hospitalized, undergoes surgery, or is transferred from outpatient to inpatient status, or inpatient to outpatient status, current drug orders are to be discontinued automatically.

- Local procedures will determine automatic stop orders for drugs in other circumstances. (Stop order dates for DEA controlled substances are addressed in Section 9.e.

All medications arriving with inmates through receiving and discharge as new commitments will be given to the Chief Pharmacist or designee.

- The Chief Pharmacist will dispose of all DEA controlled substances in a manner prescribed by the DEA.
- Pharmacy staff will dispose of all other medications according to local procedures.

- During the intake screening process, health care staff will determine the need for any medication orders. The Pharmacy will ensure that adequate supplies are on hand prior to disposal. These medications, if appropriate, will be administered on pill line until the pharmacy is able to obtain the drug(s).
- An inmate may retain medications prescribed by another Bureau institution if they are not otherwise restricted by policy (e.g. controlled substance).

h. Medications for Inmates in Special Housing Units (SHU).

Every workday, the Chief Pharmacist will obtain a list of all inmates placed in a SHU during the previous 24 hours (e.g. SENTRY, Operations Lieutenant). Using this list, the pharmacist will issue current medication(s) and ensure the MAR is available for administration of all restricted medications during SHU rounds.

- Local procedures will be developed and negotiated to retrieve the inmate's confiscated medication. Health Services staff will determine if the medication should be administered or redistributed to the inmate, if appropriate.
- Local policies and procedures will stipulate the medication(s) and amount (number of days) an inmate in SHU may maintain in their cell.
- Under no circumstances will medication be locked up with the inmate's property, thrown in "hot trash," or distributed or administered to an inmate by anyone other than a health care provider.

i. Psychiatric Medication. Refer to Program Statement on Psychiatric Services for procedures on obtaining informed consent, non-compliance, and patient counseling.

Informed consent will be obtained and documented before dispensing or administering psychiatric medication. Ordinarily, the prescribing physician will be responsible for obtaining the informed consent.

- Psychiatric medication for a current DSM Axis III diagnosis does not require an informed consent (e.g. amitriptyline for trigeminal neuralgia or headache disorder), but does require routine patient counseling procedures.

- (1) **Continuity of Care.** All institutions will have a system(s) in place for ensuring continuity of care for all inmates receiving psychiatric treatment. This system will include:
 - Review of psychiatric history prior to incarceration;
 - Review of psychiatric treatment prior to intra-system transfer;
 - Monitoring compliance with psychiatric medications; and
 - Maintaining documented informed consent in the health record.
- (2) **Non-Compliance.** All institutions will have a system(s) in place for timely notification of noncompliance. Such notification will be made to the CD and other relevant mental health staff, such as the Chief of Psychology, treating staff, or contract psychiatrist.
 - At Psychiatric Referral Centers (PRCs), the treating psychiatrist and Chief Psychiatrist will be informed of any noncompliance issues.

j. **OTC Medications.** See the Program Statement on Over-the-Counter Medications.

k. **Outdated Medications.** The Chief Pharmacist will maintain adequate records and procedures to ensure that outdated medications are not used.

- Expired medications must be stored separately.
- Expiration dates will be the last day of the month unless otherwise specified.
- Local procedures will be written for disposal of expired medications.

When multi-dose vials of injectable medications are opened, the expiration date will be regarded as the manufacturer's expiration date as long as aseptic technique is used, unless otherwise stated by the manufacturer in the package labeling.

l. **Hormone Maintenance Drugs.** Refer to the Program Statement on Patient Care.

m. **Investigational/Experimental Drugs.** Refer to the Program Statement on Patient Care.

10. MEDICATION ERRORS

a. Definitions

- (1) A **medication error** is a dose of medication that deviates from the physician's order as written in the inmate's health record or from the expected standard of care, or institution policy and procedures.
 - With the exception of errors of omission, the patient must actually receive the drug for the incident to be classified as a medication error.
- (2) A **potential error** is a mistake in prescribing, dispensing, or planned medication administration that is detected and corrected through intervention, by another health care provider or the inmate, before actual medication administration.
 - Documentation of instances in which an individual has prevented the occurrence of a medication error will help identify system weaknesses and reinforce the importance of multiple checks in the medication use system.

b. **Types of Medication Errors.** Based on the American Society of Health Systems Pharmacists (ASHP) Guidelines, medication errors will be categorized as follows:

- **Prescribing Error.** An incorrect drug selection (based on indicators, contraindications, known allergies, existing drug therapy, and other factors), dose, dosage form, quantity, route, concentration, rates of administration, or instructions for using a drug product ordered or authorized by a physician (or other legitimate prescriber). This includes illegible medication orders that lead to errors that reach the patient.
- **Omission Error.** The failure to administer an ordered dose to a patient before the next scheduled dose, if any.
- **Wrong Time Error.** Administration of a medication outside a predefined time interval from its scheduled administration time.

- **Unauthorized Drug Error.** Administration to the patient of medication not authorized by a legitimate prescriber for the patient.
- **Improper Dose Error.** Administration to the patient of a dose that is greater than or less than the amount ordered by the prescriber or administration of duplicate doses to the inmate.
- **Wrong Dosage Form Error.** Administration to the patient of a medication in a different dosage form than ordered by the prescriber (e.g., intramuscular instead of intravenous).
- **Wrong Drug-Preparation Error.** Medication incorrectly formulated or manipulated before administration.
- **Wrong Administration Technique Error.** Inappropriate procedure or improper technique in the administration of a drug.
- **Deteriorated Drug Error.** Administration of a medication that has expired or for which the physical or chemical dosage form integrity has been compromised.
- **Monitoring Error.** Failure to review a prescribed regimen for appropriateness and detection of problems, or, failure to use appropriate clinical or laboratory data for adequate assessment of patient response to prescribed therapy.
- **Compliance Error.** Inappropriate patient behavior regarding adherence to a prescribed medication regimen.
- **Other Medication Errors.** Any medication error that does not fall into one of the above predefined categories.

c. **Applicability and Procedures.** Listed below are the required elements of the institution's Medication Error Program. The Pharmacy Technical Reference Manual (TRM) should be used as a reference for the institution program.

- The monitoring and reporting of medication errors will be conducted in a **blame-free** manner and focus primarily on systems and continuous quality improvement activities rather than on individuals.

- (1) **Organizational Responsibilities.** Sufficient personnel must be available to perform tasks adequately and a suitable work environment must exist for preparing drug products.

- Lines of authority will be clearly defined for medication ordering, dispensing, and administration.

A formal Drug Use Evaluation (DUE) program will be integrated and coordinated with the overall institution Quality Improvement Program (QIP). The institution's QIP will include monitoring, evaluation, and resolution of problems in the area of quality and appropriateness of patient care services the pharmacy department provides.

- Pharmacists and others responsible for processing medication orders will have routine access to appropriate clinical information and patients (including medication, allergy and hypersensitivity profiles; diagnoses; pregnancy status; and laboratory values) to help them evaluate the appropriateness of medication orders.

Pharmacists will maintain medication profiles for all patients, both inpatients and ambulatory patients, who receive care at the institution. This profile will include adequate information to allow monitoring of the following:

- medication histories;
- allergies;
- potential drug interactions and Adverse Drug Reactions (ADRs);
- duplicate drug therapies;
- pertinent laboratory data; and
- other information.

The Pharmacy Department must be solely responsible for procuring, distributing, and controlling all drugs used within the organization.

- The preferred administration method is the unit dose drug distribution and control system.

- Comprehensive policies and procedures that provide for efficient and safe distribution of all medications and related supplies to patients will be established.
- Except in emergencies, all sterile and non-sterile drug products will be dispensed from the pharmacy.
- The storage of non-emergency floor stock medications on the nursing units or in other patient care areas will be limited to OTCs and stat dose quantities of selected drugs.
- Only abbreviations approved in the Program Statement on Health Information Management may be used.

The telephone number of the local **poison control center** will be displayed prominently in the pharmacy and readily available in areas where medications are dispensed/administered.

The pharmacy department, in conjunction with nursing, risk management, QIP, and the medical staff, will conduct ongoing educational programs to discuss medication errors, their causes, and methods to prevent their occurrence.

- (2) **Prescriber Responsibilities.** Prescribers will evaluate the patient's total status and review all existing drug therapy before prescribing new or additional medications.

- Prescribers will be familiar with the medication use system in place within the institution (e.g., the formulary system, DUE programs, allowable delegation of authority, procedures to alert nurses and others to new drug orders, standard administration times, and approved abbreviations).

Medication orders written in the health record and inpatient record, must be complete and will include:

- drug name;
- route and site of administration;
- dosage form;
- dose;
- strength;
- frequency of administration;

- duration of therapy; and
- prescriber's name.

In some cases, a dilution, rate, and time of administration should be specified.

Prescribers will write legible medication orders. An illegible handwritten order will be returned to the prescriber and regarded as a potential error.

Medication orders will include specific instructions rather than using non-standard or ambiguous abbreviations. Specific instructions help differentiate among intended drugs.

- Medication orders will include standard nomenclature, using the drug's name. Avoid locally coined names (e.g., Dr. Doe's compound); chemical names; unestablished abbreviated drug names; acronyms; and apothecary or chemical symbols.
- Always use a leading zero before a decimal expression of less than one (e.g., 0.5 ml).
- A terminal zero will not be used (e.g., 5.0 ml).

Ordinarily, verbal orders will be reserved for emergency situations. When it is impossible for the provider to write the order, the following must occur:

- The health care provider will read the order back to the prescriber to confirm it.
- The health care provider receiving the verbal order will write the order in the patient's health record.
- The prescriber will confirm the order by signing the chart entry within 24 hours or the next working day.

- (3) **Pharmacist Responsibilities.** Pharmacists will participate in drug therapy monitoring and DUE activities to help achieve safe, effective, and rational use of drugs.

Pharmacists must be familiar with the medication use system in place within the institution, including:

- the formulary system;
- DUE programs;
- allowable delegation of authority procedures;
- procedures to alert health care providers and others to new drug orders;
- standard administration times;

Each institution will have a local policy outlining procedures to be followed for "hold" orders.

Before dispensing medications in non-emergency situations, the pharmacist will review an original copy of the written medication order. Pharmacists will have a system for self-checking the reading of medication orders, labeling, and dosage calculations.

- When possible, for high risk drug products, all work should be double checked by another member of the pharmacy staff (e.g., injectable/IV admixtures, cancer medications).

Pharmacists will dispense medications in ready-to-administer dosage forms whenever possible. Pharmacists will ensure timely delivery of medications to the patient care area after receipt of the orders.

- If medications doses are not delivered or therapy is delayed pending resolution of a detected problem (e.g., allergy or contraindications), the pharmacist will inform the health care staff of the delay and the reason.

Pharmacy staff will review medications that are returned to the department. Such review processes may reveal system breakdown or problems that resulted in medication errors (e.g., omitted doses and unauthorized drugs).

c. **Monitoring and Managing Medication Errors.** The staff member identifying the error will report potential and actual medication errors on the Medication Error form (BP-S795). The electronic version of this form will be used when available.

- (1) Physician notification will be made when clinically indicated.

The Medication Error form will be submitted to the institution Chief Pharmacist who will report this information to the QIP Coordinator.

- (2) The QIP coordinator will furnish a copy of the Medication Error Report or a summary of all reports, to the HSA.
- (3) After reviewing the available information, the HSA, Clinical Director, and Chief Pharmacist may determine that immediate intervention (e.g. further education) is necessary to prevent further repeats of the same or similar error, rather than wait on the conclusions of the P&T Committee.

Medication Error Severity Ratings

Level 0	No medication error occurred (<u>potential errors</u> rated Level 0))
Level 1	An error occurred that did not result in patient harm
Level 2	An error occurred that resulted in the need for increased patient monitoring, but no change in vital signs and no patient harm
Level 3	An error occurred that resulted in the need for increased patient monitoring with a change in vital signs but no ultimate patient harm, or, Any error that resulted in the need for increased laboratory monitoring
Level 4	An error occurred that resulted in the need for treatment with another drug or an increased length of stay
Level 5	An error occurred that resulted in permanent patient harm (sentinel event)
Level 6	An error occurred that resulted in patient death (sentinel event)

The QIP coordinator and the Chief Pharmacist will meet at least quarterly to review the forms collected, analyze, and classify the errors, and prepare a Medication Error Review Summary (BP-S796) to report at the P&T Committee.

- This summary will not identify those making the error by name.
- An electronic copy of this summary will be sent to the BOP Chief Pharmacist for informational purposes.

The P&T Committee will suggest process improvements that result from the review. Suggestions may include:

- Conducting organizational staff education;
- Making recommendations for staffing levels;
- Revising policies and procedures, or
- Changing facilities, equipment, or supplies.

d. **Error Resolution.** All errors will be reviewed and researched by the QIP coordinator or Chief Pharmacist.

- The P&T Committee will research errors for correctable administrative and clinical issues and report medication errors in the meeting minutes.

In the large majority of cases, one or more of the following actions are appropriate:

- Error discussion;
- Staff training; and
- Local peer review. (Refer to Program Statement on Credentialing, Privileging and Practice Agreements)

Reviews should focus on the improvement of performance by recognizing errors and developing a plan to minimize future errors.

- A Focus Review Team should evaluate errors resulting in permanent patient harm or death (e.g. sentinel events).

11. **ADVERSE DRUG REACTION REPORTING AND DRUG RECALL.** The Health Services Division participates in adverse reaction reporting programs sponsored by the Food and Drug Administration (FDA) of the Department of Health and Human Services (DHHS).

- Institutions will use the Adverse Drug Reaction Monitoring and Prevention Program outlined in the Pharmacy TRM.
- Drug product defects will be reported in accordance with the FDA drug product problem reporting program.
- A drug recall procedure that can be implemented readily, including provisions for documenting results, will be initiated.
- Adverse Drug Reactions and drug recalls will be reported in the institution P&T Minutes.

12. **RELEASE/TRANSFER MEDICATION.** When an inmate is transferred to a CCC, up to a 90 day supply of current medication will be provided pursuant to a new medication order. The number of days supplied will be determined on a case-by-case basis, dependent upon clinical justification and release planning for the inmate (i.e., insurance, Medicaid, Aids Drugs Assistance Programs (ADAP) availability).

- Unless properly justified, a minimum of 30 days supply of chronic medications will be provided.
- Inmates requiring DEA controlled substances may be considered for transfer to a CCC after institution staff consult with the Community Corrections Manager (CCM) to determine if the respective CCC can accommodate the inmate's special medication needs.

An inmate releasing from custody will be provided a 30 day supply of medication. The medication, with directions, will be given to the releasing officer as indicated by local procedure.

- All release medications will be dispensed in an approved child-resistant container unless waived by the inmate or clinically justified (e.g. disability, etc.).

All intra-system transfers will be provided with a minimum seven day supply of all clinically necessary medications as noted on the Medical Summary of Federal Prisoner/Alien in Transit form (BP-S659).

- On a case-by-case basis, additional medication may be necessary en route to the next institution, with consideration given to length of time, mode of travel, and availability of medication at the next institution.
- All DEA controlled substances and other items subject to abuse will be restricted to minimum quantities.
- An inmate brought in from another Bureau institution (intra-system transfer) may use medication at the receiving institution in accordance with local policy.

A copy of the Medical Summary of Federal Prisoner/Alien in Transit (BP-S659) form may be used to transcribe current medications.

13. **PRIME VENDOR CONTRACT.** The national contracts for medications and pharmaceutical products are **mandatory**. All institutions will order from these contracts, which are applicable for Federal Supply Schedule (FSS), General Services Administration (GSA), and Blanket Purchase Agreement (BPA) contract pharmaceutical items.

- If the items are identified on the computer database as non-contract items, normal procurement procedures will be used; i.e., purchase from FSS, mandatory source, or open market.

The Chief Pharmacist will implement the prime vendor contract at the institution. Procedures for delivery and receipt of medications will be developed locally in conjunction with the warehouse.

- Questions that cannot be resolved by the Prime Vendor regarding the contract will be directed to the BOP Chief Pharmacist.
- The Chief Pharmacist will ensure institution compliance with the Prime Vendor Procedural Guide. A current guide can be obtained from the Prime Vendor.

Mandatory national contracts exist for selected medications listed in the National Formulary. In these cases, institutions **must** use only the specified brand of the product under contract, when available.

- In order to receive the beneficial contracted price, no institution is authorized to vary from this requirement.

All medications indicated for treatment or manifestations of HIV and AIDS will be listed separately on a purchase order under project number **84-U** if purchased from a vendor **other than** the Prime Vendor. HIV/AIDS medications purchased from the Prime Vendor will use the project number designated to their respective region:

NER	73L	MAR	74L
SER	75L	SCR	76L
NCR	77L	WXR	78L

Medications used to treat Hepatitis C Virus (HCV) infection, such as Interferon Alfa 2B, Interferon Alfa con-1, and ribavirin, will be ordered using project number **31-J**.

Medications other than those to treat HCV or HIV/AIDS will be ordered from the Prime Vendor using the following project number designated to their respective region:

NER	72I	MAR	73I
SER	74I	SCR	75I
NCR	76I	WXR	77I

14. **NEEDLES AND SYRINGES.** The HSA or designee will be responsible for the control of needles and syringes. The importance of proper control and use cannot be overstated.

- **All** unused needles and syringes in sub-stocks will be inventoried on each medically staffed shift. For institutions using computer driven medication stations (e.g. SureMed or Pyxis) for needle and syringe accountability, the shift inventories and disposition sheets are not required.
- Local procedures will specify responsibility for conducting the inventory.
- The time the inventory is conducted will be documented.

The only exceptions to the shift inventory requirement are properly sealed emergency carts or kits or the automated medication cabinets (e.g. SureMed or Pyxis).

- Each institution will develop a policy for inventorying sealed carts on a quarterly basis.

When a discrepancy is noted, a thorough search will be conducted by the finder of the discrepancy, after attempting to resolve the discrepancy, for the missing item(s).

- The finder will report all unresolved discrepancies immediately to the HSA and the Operations Lieutenant.
- After the search, a written memorandum to the HSA and Operations Lieutenant will be prepared by the finder explaining the details.

Local procedures will identify the party responsible for storing needles and syringes. **All** unused sub-stock needles and syringes will be stored in a separate locked cabinet or drawer, within a room locked at all times when staff are not present.

- **All** main stock inventories of sterile needles and syringes will be stored in a secure area, and have a perpetual inventory.
- Each facility will have suitable storage space.

The HSA will ensure a Certificate of Disposition for Control of Needles and Syringes is provided for all areas accountable for these items. The HSA will also ensure local procedures indicate responsibility for requisition of needles and syringes and for recording additions to and uses of inventory.

- Each area of use will have an individualized inventory.
- For institutions using a computer driven medication station, the Activities Report will take the place of the Certificate of Disposition.

The practitioner using or obtaining new supplies of needles and syringes will subtract or add, as appropriate, from the inventory.

- The employee using the needle or syringe will designate on the form the patient's name or reason that the item(s) was used, and sign for the item(s), indicating date and time.
- Employees will not handle disposed/contaminated syringes, needles, scalpels, and other accountable items to conduct a physical count.
- Staff may check out needles/syringes in small quantities for specific indications (e.g. lab, insulin line). All unused needles/syringes will be returned to stock or sub-stock.

Needles and syringes obtained from main stock will be added to the sub-stock inventory and the new totals brought forward. Sub-stock needles and syringes will be requested from main stock via a requisition form.

- Under no circumstance will needles and syringes be stored with controlled substances.

The Certificate for Disposition for Control of Needles and Syringes will be collected by the HSA. This documentation will be retained for two years.

- The HSA will review and maintain each form for spot-check inventories of used needles and syringes.

15. **PATIENT COUNSELING.** The Chief Pharmacist will develop written procedures to address patient counseling by a pharmacist. Physical plant considerations will be factored into this plan. All inmates, whether in the parent institution, SHU, or a satellite facility, will be provided information on their medication. Patient counseling will comply with federal and state regulations.

- This information may take the form of a written medication information sheet and/or oral counseling. Every effort should be made to provide oral counseling when possible.
- Written medication information sheets may be those developed by Bureau pharmacists or those available from pharmacy software program.
- Oral counseling may be done at the pharmacy window, a designated counseling area, or the inmate's cell always being mindful of patient confidentiality.
- The patient counseling will also consider literacy and primary language.

The opportunity for oral counseling by a pharmacist will be offered when new medication is distributed. If not logistically possible, local procedures will provide an avenue for inmates to request counseling.

Patient information to be furnished with new medication orders may include:

- Name of the Drug;
- Indications;
- Dosage Instructions;
- Significant or common Adverse Effects;
- Drug-drug or Drug-food interactions;
- What to do if a dose is missed; and
- Special instructions (i.e. take with food, will discolor urine, etc.)

It is not necessary to furnish patient counseling for each medication refill. However, this provides the pharmacist with an excellent opportunity to check on patient compliance, drug effectiveness, and adverse drug reactions.

Patient information for OTC drugs dispensed by a pharmacist may be on a sheet with other OTC products, and made available in the Health Services Unit.

16. **CHRONIC MEDICATION/SUMMARY SHEET.** The chronic medication/summary sheet is filed under the problem list in Section 2 of the health record. The chronic medication/summary sheet lists current medications.

- Each institution will determine the appropriate format to meet this requirement (i.e., computerized pharmacy records available to the prescriber, etc.).

17. **METHADONE.** The regulations on purchasing, prescribing, and storing of methadone vary depending on the clinical reason for its use. There are currently only three approved uses for methadone within BOP institutions. These uses are:

- Treatment of opiate addicted pregnant inmates;
- Detoxification of opiate addicted inmates; and
- Treatment of severe pain.

a. **Treatment/Detoxification.** Title 42 CFR 8 requires that any healthcare facility using methadone for detoxification or maintenance of opioid addicted patients must have an accredited behavioral health program in order to maintain a valid license for the use of methadone. The responsibility for opioid treatment centers falls under the Substance Abuse and Mental Health Services Administration (SAMHSA).

There are several options available to institutions regarding the use of Methadone.

- (1) Institutions may participate in the DEA Narcotic Addiction Treatment Program by obtaining a methadone license. This license allows institution physicians to treat narcotic addicts with a tapering or withdrawal schedule of methadone for an extended period.

- Inmates will not be maintained on methadone with the exception of pregnant inmates.

Institutions which have a methadone license must store bulk stock methadone in a separate safe from that used to store other controlled substances.

- Methadone ordered under this license may only be used for detoxification purposes. It may not be used for other diagnoses (e.g. pain management).
- All records pertaining to purchasing, prescribing, and administering must be stored separate from other controlled substance records.

- If the institution chooses this method, an application to SAMHSA must be submitted.
 - If the institution chooses to maintain a methadone license the Chief Pharmacist will be responsible for the accreditation process. The institution will be responsible for the corresponding fee.
- (2) For institutions without a methadone license, the DEA allows physicians to prescribe methadone for up to 72 hours, in an emergency, to narcotic addicts.
- The medication order may not be extended or renewed for that individual under any circumstances.
 - This 72 hour window allows for rapid tapering when an inmate coming into the institution has been maintained on methadone in the community.
 - In this instance, the main stock of methadone may be stored with other controlled substances.
 - Documents pertaining to purchase, prescribing, and administering do not have to be stored separately from other Schedule II controlled substances.
- (3) A contract with a local methadone clinic may be pursued to supply methadone for detoxification. All institutions which do not have a methadone license and could conceivably receive a pregnant female on methadone will have a contingency plan, such as this, in place.
- Any pregnant female arriving at the institution on methadone needs to be maintained on methadone until the baby is delivered.
 - Detoxification should be done after delivery. The CD will seek guidance from the BOP Medical Director.
- (4) Institutions may choose non-methadone alternative detoxification protocols either after the 72 hour window explained in subsection 2. above or upon receipt of the inmate.

b. **Treatment of Pain.** Bureau physicians may prescribe methadone for inmates with severe pain for an extended period. The procedures for prescribing methadone for pain are the same as those described in 9.e.

- When prescribed for severe pain, methadone may be purchased without a methadone license.
- Bulk stock methadone may be stored with other controlled substances.
- Documents pertaining to purchase, prescribing, and administering do not have to be stored separately from other Schedule II controlled substances. However, they must be "readily recoverable."
- Ensure that medication orders for methadone clearly indicate the use for severe/chronic pain in the health record to avoid any confusion or problems during a DEA audit.
- Institutions with a methadone license are not allowed to order methadone used for pain under the methadone detoxification license. These inventories must be kept completely separate.

18. **URGENT CARE CARTS.** An adequate supply of urgent care drugs will be maintained in the pharmacy and in designated areas. The Chief Pharmacist is responsible for all medications located in the urgent care carts and kits, and for the inspection procedures used.

- Approved DEA controlled substances may be maintained on urgent care carts and will be inventoried by pharmacy staff at least quarterly or whenever the urgent care cart seal is broken.
- Information regarding supplies and medication for the urgent care carts, based on the level of emergency care provided, is available from the BOP Chief Pharmacist.

/s/
Harley G. Lappin
Director



Program Statement

OPI: HSD/HSS
NUMBER: P6541.02
DATE: 11/17/2004
SUBJECT: Over-the-Counter
Medications

1. [PURPOSE AND SCOPE § 549.30. This subpart establishes procedures governing inmate access to Over-The-Counter (OTC) medications for all inmates except those in inpatient status at Federal Medical Centers. Inmates may buy OTC medications which are available at the commissary. Inmates may also obtain OTC medications at sick call if the inmate does not already have the OTC medication and:

- a. Health services staff determine that the inmate has an immediate medical need which must be addressed before his or her regularly scheduled commissary visit; or
- b. The inmate is without funds.]

This Program Statement establishes a program allowing inmates improved access to Over-the-Counter (OTC) Medications by making them available for sale in the commissary and improves the allocation of medical resources so that inmates' medical needs will continue to be met.

2. **PROGRAM OBJECTIVES.** The expected results of this program are:

- a. Inmates will have access to Over-the-Counter (OTC) medications in the institution commissary.
- b. Personal resources will be used by inmates to obtain OTC medications that are indicated for cosmetic and general hygiene issues or symptoms of minor medical ailments.
- c. Health Services resources will be better used during inmate triage/sick-call.

3. **SUMMARY OF CHANGES.** The change, authorized under new rules language now reads, "An inmate without funds is an inmate who has not had a trust fund account balance of \$6.00 for the past 30 days.

4. DIRECTIVES AFFECTED

a. Directive Rescinded

P6541.01 Over-the-Counter Medications (9/10/2003)

b. Directives Referenced

P4500.04 Trust Fund/Warehouse/Laundry Manual (6/16/97)

P6000.05 Health Services Manual (9/15/96)

5. STANDARDS REFERENCED

a. American Correctional Association 4th Edition Standards for Adult Correctional Institutions: 4-4379

b. American Correctional Association Standards for Adult Local Detention Facilities: 3-ALDF-4E-17M

6. REFERRING INMATES FOR OTC MEDICATIONS. All Bureau institutions will stock at least 25 OTC medications as referenced in the Trust Fund/Warehouse/Laundry Manual. The Administration Division, Trust Fund Branch and the Health Services Division's Medical Director will determine which OTC medications and other medically related items (e.g., dietary/herbal/natural products) will be approved or not approved for sale in the commissary.

The commissary will provide a current list of all OTC medication stocked in the commissary to the Health Services Administrator (HSA). The HSA will ensure the list of OTC medications is distributed to all health care providers.

- The HSA/Pharmacist will be a member of the local commissary committee to ensure the local commissary medical items follow the restrictions of the Trust Fund/Warehouse/Laundry Manual and that medical related commissary items are appropriate for the medical conditions of the inmates housed at that facility.

During institution triage/sick call, medical staff will refer inmates to the commissary in response to complaints related to cosmetic and general hygiene issues or symptoms of minor medical ailments.

Examples of these complaints are:

- Occasional constipation
- Seasonal allergies
- GI upset
- Dandruff
- Uncomplicated Athlete's Foot
- Acne

- Vitiligo
- Chapped Lips
- Dry Hands
- Muscle Aches from Exertion

Institutions will have a local procedure providing inmates access to commissary on other than their assigned commissary day to obtain OTC medication. A local procedure will be developed to provide inmates housed in Special Housing Units access to OTC medication from the Pharmacy.

7. PAYMENT FOR OTC MEDICATIONS. Inmates will purchase OTC medications from the commissary with their personal funds. However, inmates will be given OTC medications at the institution pharmacy if they are determined to be without funds (indigent). Refer to Section 7.

The Computer Services Manager will establish a Browser-based Application for Inmate Account Inquiry for health services staff to access individual inmate account record information within the Trust Fund Accounting and Commissary System (TRUFACS).

Institutions that have not yet implemented TRUFACS will establish a local procedure to distribute a weekly listing of inmates without funds (indigent inmates) to the HSA. The HSA will ensure the list is distributed to all health care providers.

8. [INMATES WITHOUT FUNDS \$ 549.31

- a. The Warden must establish procedures to provide up to two OTC medications per week for an inmate without funds. An inmate without funds is an inmate who has not had a trust fund account balance of \$6.00 for the past 30 days.**
- b. An inmate without funds may obtain additional OTC medications at sick call if health services staff determine that he/she has an immediate medical need which must addressed before the inmate may again apply for OTC medications under this section.**
- c. To prevent abuses of this section (e.g., inmate shows a pattern of depleting his or her commissary funds before requesting OTC medications), the Warden may impose restrictions on the provisions of this section.]**

9. PROCEDURES FOR INMATES UNABLE TO AFFORD OTC MEDICATIONS.

All inmates, including those without funds (indigent), will have the same opportunity to obtain OTC medications (once weekly).

Each institution will establish one day per week for this purpose.

Inmates without funds (indigent inmates) will be supplied with OTC medication at the institution pharmacy (Attachment A). Inmates who wish to obtain OTC medications, must come to the institution pharmacy at the first pill line on the designated day and turn in the request.

One request per inmate per week will be accepted.

- The inmate will select no more than two items on the Inmate Over-the-Counter Medications Request form (BP-S788). If he or she needs more than two items, he or she must attend triage/sick call.
- When the pharmacy staff receives the form, they will verify the requesting inmate is without funds (indigent) by reviewing the TRUFACS browser based application report for inmates without funds (indigent inmates).
- Pharmacy staff will maintain a record of the OTC item(s) issued to a given inmate for 30 days (e.g., maintain the BP-S788 form in a 30 day suspense file).

Attachment A lists medications used to treat or alleviate common symptoms safely without the need for a medical examination, consistent with self-treatment practices in the community.

In addition, other medications and medically-related items are stocked in the commissary but do not appear on Attachment A. These items are stocked in the commissary for the inmates' convenience but are not considered medically necessary items which must be made available to inmates without funds (indigent inmates).

If an inmate without funds (indigent inmate) desires an OTC medication or medically-related item which the commissary stocks, but is not listed on the BP-S788, the inmate may access triage/sick call through the usual procedures and request the item. The health care provider will determine the request's medical appropriateness and may issue an appropriate quantity of the item to the inmate.

10. SPECIAL PROCEDURES FOR FEDERAL MEDICAL CENTERS. Inmates classified as outpatient or general population at Federal Medical Centers will participate in this program.

/s/
[REDACTED]
Director

LIST OF MEDICALLY-NECESSARY OTC MEDICATIONS THAT WILL BE SUPPLIED
AT THE PHARMACY FOR INMATES WITHOUT FUNDS (INDIGENT INMATES)
IN THEIR TRUST FUND ACCOUNT

MEDICATION	WEEKLY AMOUNT	MONTHLY AMOUNT
Acetaminophen 5gr Tablets	24	100
Aspirin 5gr Tablets	24	100
Chlorpheniramine 4mg Tablets	24	100
Hydrocortisone Cream 0.5%		1 tube
Mylanta II/Maalox Plus Liquid	5 oz	12 oz
Milk of Magnesia Liquid		12 oz
Psyllium Muciloid Powder SF		14 oz
Selenium 1% Shampoo		4 oz
Simethicone 40mg Tablets	24	100
Tolnaftate 1% Cream		15 gm

LIST OF EXHIBITS – INTRODUCTION

1. Predicating information.
2. Office of Chief Medical Examiner, City of New York, Autopsy Report, dated August 11, 2019, regarding the autopsy of Jeffrey Epstein.
3. Indictment filed in the U.S. District Court for the Southern District of New York against Jefferey Epstein, dated July 2, 2019.
4. Federal Bureau of Prisons Psychological Reconstruction dated September 17, 2019, regarding inmate Jeffrey Epstein.
5. Decision and Order Remanding Defendant filed in the U.S. District Court for the Southern District of New York against Jeffrey Epstein, dated July 18, 2019.

NewYorkComplaints, DOJIG (OIG)

From: BOP OFFICE OF INTERNAL AFFAIR <[REDACTED]>
Sent: Monday, August 12, 2019 8:58 AM
To: NewYorkComplaints, DOJIG (OIG)
Subject: OIG Referral - OIA-2019-05324
Attachments: OIA-2019-05324.zip

Importance: High

NOTE: PLEASE DO NOT REPLY TO THIS EMAIL DIRECTLY. THIS IS A SERVICE MACHINE FOR OUTBOUND MESSAGES ONLY.

Please send any and all queries related to this case to the following email address: [REDACTED]
[REDACTED]

PLEASE CLICK ON THE FOLLOWING LINK TO ACKNOWLEDGE YOU HAVE RECEIVED THIS EMAIL NOTICE. (** FOR BOP STAFF ONLY **)

<https://bop-cms.bop.gov:9443/OGC-OIA/RespToEmailNotice?email=DOJOIG.NewYorkComplaints@usdoj.gov&caseID=OIA-2019-05324&PID=93+3+ICM8+ICMNLSD13+oiaCaseFolder59+26+A1001001A19H12A83027B5664518+A19H12A83027B566451+14+1007&CPID=94+3+ICM8+ICMNLSD14+oiaCaseRouting59+26+A1001001A19H12A83027B5664518+A19H12A85732F863011+14+1008>

From: [REDACTED]

To: NEW YORK FIELD OFFICE ([REDACTED])

Subject: OIG Referral - OIA-[REDACTED]

[REDACTED]
Materials Handler Supervisor, WS-04

[REDACTED]
Correctional Officer, GL-05
MCC New York

Endangering the Safety of an Inmate (111/062A) Inattention to Duty (111/054) Failure to Follow Policy (111/060)

Please reference OIA Case No. [REDACTED] when providing the OIG IDMS to our office.

Please see attachment.

Thank you,

[REDACTED]
Investigative Support Specialist
Federal Bureau of Prisons
Office of Internal Affairs

[REDACTED]
Washington, D.C. 20534

Phone: [REDACTED]

Fax: [REDACTED]

Attached Doc:

Matter Zipped folder - OIA-[REDACTED]

NOTE: PLEASE DO NOT REPLY TO THIS EMAIL DIRECTLY. THIS IS A SERVICE MACHINE FOR OUTBOUND MESSAGES ONLY.

Please send any and all queries related to this case to the following email address: [REDACTED]
[REDACTED]

AUG 01

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

Date of Incident August 10, 2019		Time of Incident 6:33 a.m.	
Place Incident Occurred MCC New York			
Allegation(s) Inattentive to Duty Failure to Follow Policy			
Source of Allegation(s) [REDACTED], Lieutenant			
Subject of Incident's Information:			
Full Name [REDACTED]		Title and Grade Material Handler Foreman Correctional Officer GS-5	
Victim (Inmate) Information (If applicable)			
Full Name):		Title/Reg. No.	
SUMMARY OF INCIDENT: (Provide a brief, but complete summation of incident including names of any witnesses) On August 10, 2019, at approximately 6:33 a.m. inmate Epstein, Jeffrey 73618-054 was found unresponsive in his assigned cell in the Special Housing Unit. Inmate Epstein was pronounced dead at 7:36 a.m. by the Emergency room physician at the local hospital. During a conversation with the Operations Lieutenant, Officer [REDACTED] stated that she and Officer [REDACTED] did not conduct the 3 a.m. and 5 a.m. count. The Operations Lieutenant also had a conversation with [REDACTED] and he stated "we messed up". Ms. [REDACTED] and Mr. [REDACTED] were both asked to provide memorandums for the incident, they both stated they were traumatized and needed to go home. They also stated that they wanted to contact the Union President to review any memorandum they would have to write.			
Describe any action taken locally prior to OIA referral: Are local, state or federal authorities involved?			
Classification 3 Case ☐ Yes ☒ No			
Printed Name and Signature of Person Preparing Referral of Incident [REDACTED], Warden			
CEO's [REDACTED] and Signature [REDACTED], Warden		Location MCC New York	Date 8/10/19
NOTE: Please fax all pertinent information as soon as possible after completion of the telephonic referral. Include all statements, memos, affidavits, medical reports, personnel actions as may apply.			



U.S. Department of Justice

Federal Bureau of Prisons

Memorandum

Federal Correctional Institution

DATE: August 10, 2019

TO: Captain, [REDACTED]

REPLY TO: [REDACTED]

ATTN OF: [REDACTED], Operations Lieutenant

SUBJECT: Inmate Epstein, Jeffrey (#76318-054)

On August 10, 2019 at approximately 6:33 A.M. The Special housing unit Shu#1 Officer [REDACTED] announced by via radio medical emergency on 9 South upon arrival, officer [REDACTED] stated to me that inmate Epstein had hung himself. As I entered cell Z06-220 on L-tier, I witnessed inmate Epstein on the floor of his cell unresponsive with Shu#2 officer [REDACTED] performing life- saving CPR on him. I immediately relieved him and begin administering CPR continuously until relieved by clinical nurse [REDACTED] who continued to perform CPR. I then notified the control center to call 911 emergency services at 6:35 a.m.; CPR was being continuously administered as inmate Epstein was escorted to the 2nd FL. Health Service Area, while in the medical area I witnessed nurse [REDACTED] continuously performing CPR on inmate Epstein until relieved by EMT staff at 6:43 am. Inmate Epstein #76318-054 was escorted from the medical area to the Rear-gate area where he was transferred into EMS ambulance 04D at 7:10 am with #1 Escort officer [REDACTED] and followed in the Bop chase vehicle by escort by #2 Escort officer [REDACTED] to downtown Beekman Hospital. During the emergency situation s/o [REDACTED] stated to me "we did not complete the 3am, 5am rounds. Officer [REDACTED] was appearing very distraught when ask what happened he stated "we messed up, followed by" I messed up" she's not to blame we didn't do any rounds. .

Case Participants**Case Participant 1**

Type	Complainant
Additional Role	Witness
Name	[REDACTED]
Address	[REDACTED]
City	[REDACTED]
State	[REDACTED]
Zip	[REDACTED]
Soc. Sec. No.	[REDACTED]
Date of Birth	[REDACTED]
Race	[REDACTED]
Sex	[REDACTED]
Title	CORRECTNL OFFCR
Working Title	6237
Pay Plan	GS
Series	0007
Grade	11
Step	06
Region	NORTHEAST REGION - NER
Institution	New York (MCC) - NYM
Bargaining Unit	8888
Discipline	2
Hazardous Duty Date	[REDACTED]
Entered On Duty	[REDACTED]
Separated Date	N/A

Case Participant 2

Type	Subject
Additional Role	
Name	[REDACTED]
Address	[REDACTED]
City	[REDACTED]
State	[REDACTED]
Zip	[REDACTED]
Soc. Sec. No.	[REDACTED]
Date of Birth	[REDACTED]
Race	[REDACTED]
Sex	M
Title	MTRLS HNDLR SUPVR
Working Title	7018
Pay Plan	WS

Series	6907
Grade	04
Step	05
Region	NORTHEAST REGION - NER
Institution	New York (MCC) - NYM
Bargaining Unit	1018
Discipline	9
Hazardous Duty Date	[REDACTED]
Entered On Duty	[REDACTED]
Separated Date	N/A
Case Participant 3	
Type	Subject
Additional Role	
Name	[REDACTED]
Address	[REDACTED]
City	[REDACTED]
State	[REDACTED]
Zip	[REDACTED]
Soc. Sec. No.	[REDACTED]
Date of Birth	[REDACTED]
Race	[REDACTED]
Sex	[REDACTED]
Title	CORRECTNL OFFCR
Working Title	4585
Pay Plan	GL
Series	0007
Grade	05
Step	01
Region	NORTHEAST REGION - NER
Institution	New York (MCC) - NYM
Bargaining Unit	1018
Discipline	2
Hazardous Duty Date	[REDACTED]
Entered On Duty	[REDACTED]
Separated Date	N/A
Case Participant 4	
Type	Victim
Additional Role	Other
Name	JEFFREY EPSTEIN
Race	WHITE

Sex	M
Ethnicity	OTHER THAN HISP
Reg. No	76318-054
Region	
Institution	
Address	
City	
State	
Zip	

Matter ID: OIA-2019-05324**Short Description: M [REDACTED] - 062A - ENDANGERING THE
SAFETY OF AN INMATE****Matter Details****Login Information**

Short Name [REDACTED] 062A - ENDANGERING
THE SAFETY OF AN INMATE
Classification Category 2 - Administrative
Region NORTHEAST REGION - NER
Institution/Facility New York (MCC) - NYM
Field Office DC HEADQUARTERS
Non BOP Site
Investigated By OIA
Patriot Act Violation? No
Staff Search Procedure? No
Insider Threat? No
Office of Special Counsel? No
Self Reporting? No

State Information

Current Owner [REDACTED]
Matter Access Public
Matter Status Open
Close Date

Other Information

Disposition
Comments

Individual List**View Person Detail**

Type	Additional Role	Name	ID	Empl/Inmt/Other
Complainant	Witness	[REDACTED]		Employee
OIG Staff		NEW YORK FIELD OFFICE		Other
Subject		[REDACTED]	06085	Employee
Subject		[REDACTED]	06087	Employee
Victim	Other	JEFFREY EPSTEIN	06089	Inmate

Event List

Event Type	Due Date	Completion Date
Pending Deferral by OIG	10/11/2019	

Allegations**Allegation 1**

Allegation Category 111 - Inmate - Other On-Duty Misconduct
Allegation SubCategory 062A - Endangering the Safety of an Inmate

Status

Associated Person [REDACTED]

Arrested? No

Charged Offense

Convicted? No

Incarcerated? No

Other (Legal Action)

OIG Information

Referral Date 08/12/2019
Field Office NEW YORK FIELD OFFICE
Disposition
Deferral Date
Case Number
Date Rpt Sent to OIG

Progress

Incident Date 08/10/2019
Reported Date 08/12/2019
Open Date 08/12/2019
Last Event Pending Deferral by OIG
Inv Rpt Status
Inv Rpt Status Date

EFTA00039364

Allegation 2

Allegation Category 111 - Inmate - Other On-Duty Misconduct
Allegation SubCategory 062A - Endangering the Safety of an Inmate

Status

Associated Person

Arrested? No

Charged Offense

Convicted? No

Incarcerated? No

Other (Legal Action)

Allegation 3

Allegation Category 111 - Inmate - Other On-Duty Misconduct
Allegation SubCategory 054 - Inattention to Duty

Status

Associated Person

Arrested? No

Charged Offense

Convicted? No

Incarcerated? No

Other (Legal Action)

Allegation 4

Allegation Category 111 - Inmate - Other On-Duty Misconduct
Allegation SubCategory 054 - Inattention to Duty

Status

Associated Person

Arrested? No

Charged Offense

Convicted? No

Incarcerated? No

Other (Legal Action)

Allegation 5

Allegation Category 111 - Inmate - Other On-Duty Misconduct
Allegation SubCategory 060 - Failure to Follow Policy

Status

Associated Person

Arrested? No

Charged Offense

Convicted? No

Incarcerated? No

Other (Legal Action)

Allegation 6

Allegation Category 111 - Inmate - Other On-Duty Misconduct
Allegation SubCategory 060 - Failure to Follow Policy
Status
Associated Person
Arrested? No
Charged Offense
Convicted? No
Incarcerated? No
Other (Legal Action)

Narratives

Narrative 1

Type CASE SUMMARY
Narrative
Reportedly, on August 10, 2019, at approximately 6:33 a.m., inmate Jeffery Epstein, #76218-054, was found unresponsive in his assigned cell in the Special Housing Unit. Epstein was pronounced dead at 7:36 a.m., by an emergency room physician at the local hospital. In a memorandum dated August 10, 2019, Lieutenant [REDACTED] claims that while speaking to Correctional Officer [REDACTED] she stated that she and Material Handler [REDACTED] did not conduct the 3:00 a.m., and 5:00 a.m., rounds. It is also alleged [REDACTED] stated We messed up, and I messed up, shes not to blame we didnt do any rounds. Note: Additional staff memorandums have not yet been collected due to [REDACTED] being authorized leave, claiming they were traumatized over event. Allegedly the staff also requested that the local Union President review any memorandums written.

Matter Documents

Document Type	Name	Description	Create Date	Created By	View
Predicating Information	2019-05234 PRED.pdf		08/12/2019	[REDACTED]	View



U.S. Department of Justice
Federal Bureau of Prisons

Reentry Services Division

Washington, DC 20534

SEP 17 2019

MEMORANDUM FOR [REDACTED], REGIONAL DIRECTOR
NORTHEAST REGION

FROM: [REDACTED], Assistant Director
Reentry Services Division

SUBJECT: Psychological Reconstruction
Inmate Epstein, Jeffrey (76318-054)

Inmate Jeffrey Epstein (76318-054) died by suicide on August 10, 2019, while housed at the Metropolitan Correctional Center (MCC) in New York. The attached psychological reconstruction was completed by Drs. [REDACTED], National Suicide Prevention Coordinator, [REDACTED], Sex Offender Treatment Programs Coordinator, [REDACTED], Mental Health Treatment Coordinator and Mr. [REDACTED], Correctional Services Administrator, Northeast Regional Office. A summary review of these and other recent reconstruction findings is forthcoming. Distribution of this report is limited to staff named in this memorandum.

Recommendations at the conclusion of the report should prove beneficial to staff at the facility and will be used to inform our national suicide prevention program. Within sixty days of receipt of this memorandum and report, please provide me with a written response which outlines corrective actions as well as a plan for implementation, based on recommendations contained within. The institution response should be routed by the Warden through the Regional Director to the Assistant Director, Reentry Services Division.

If you have questions or concerns regarding this request, please contact me at [REDACTED].

cc: [REDACTED], Assistant Director, CPD
[REDACTED], Assistant Director, PRD
[REDACTED], Assistant Director, HSD
[REDACTED], Acting Warden, MCC New York

SDNY_00015278

PSYCHOLOGICAL RECONSTRUCTION OF INMATE DEATH

This is an interim report, due to an inability to gather all necessary data. Formal interviews were not conducted as a part of this reconstruction to avoid interference with pending investigations by other Department of Justice components. A copy of the video is normally made by Special Investigative Staff following a significant incident, but there was no such video in this case since the original video was confiscated by the Federal Bureau of Investigation (FBI) prior to the beginning of this reconstruction. The absence of these two sources of information severely limited the ability to establish accurate timelines, confirm subjective reports, establish converging and diverging lines of facts, or discover new areas of inquiry. As a result, information typically gathered, reviewed and consolidated during a reconstruction to support actionable findings and recommendations is limited.

Name: Jeffrey Epstein
Register Number: 76318-054

Date of Death: 08-10-2019

Prepared by: [REDACTED], National Suicide Prevention Coordinator,
Psychology Services Branch, Central Office

BACKGROUND INFORMATION

Mr. Jeffrey Epstein was a 66-year-old, White male who died on August 10, 2019, while housed at the Metropolitan Correctional Complex (MCC), in New York, New York. James C. Wills, former Acting Assistant Director, Reentry Services Division, appointed a team to conduct a psychological reconstruction. The team consisted of [REDACTED], National Suicide Prevention Coordinator, Central Office; [REDACTED], Sex Offender Treatment Programs Coordinator, Central Office; [REDACTED], Mental Health Treatment Coordinator, Central Office; and [REDACTED], Correctional Services Administrator, Northeast Regional Office. This reconstruction was established in accordance with Bureau of Prisons' (BOP) Program Statement 5324.08, Suicide Prevention Program.

Social History: Mr. Epstein did not have a Pre-Sentence Report (PSR) available at the time of the reconstruction; therefore, no official information regarding social history was accessible. The following was gathered from publicly available documents. Mr. Epstein was born in 1953 and grew up in a middle-class family in the neighborhood of Sea Gate on Coney Island, Brooklyn, New York, with one brother. After early promotion in two grades, Mr. Epstein graduated from Lafayette High School in 1969, at the age of 16. He attended Cooper Union and New York University but did not graduate from either. Mr. Epstein taught at the Dalton School, a private school on the Upper East Side of Manhattan from September 1974 until he was

dismissed in June 1976 for inadequate development as a teacher. Following that, he held a number of positions in the financial industry to include a position as a limited partner at Bear Stearns until he was dismissed for unknown policy violations in 1981. He also worked as a financial consultant and founded at least two separate companies.

Mr. Epstein had two significant periods of employment. The first of these was his position as a consultant with [REDACTED] in the late 1980s. Mr. [REDACTED] was described as his first mentor. Mr. [REDACTED] was later convicted and incarcerated for running a large Ponzi scheme. He implicated Mr. Epstein in fraudulently diverting company funds for his own personal use. Years later, [REDACTED], Mr. Epstein's sole client at J. Epstein and Company, granted him power of attorney over his affairs. Despite also being identified as Mr. [REDACTED] mentee, Mr. Epstein was again accused of misappropriating funds—more than 46 million dollars. These large sums are believed to be the seed money Mr. Epstein used to establish his considerable fortune. These events are indicative of Mr. Epstein's highly-regarded intelligence and charismatic personality.

Legal History: Mr. Epstein had a history of adult criminal charges and convictions. In June 2008, he entered into a non-prosecution agreement and pleaded guilty to one count Solicitation of Prostitution and one count Procuring a Person Under the Age of 18 for Prostitution in the state of Florida. He was sentenced to 30 months: 18 months of incarceration and 12 months of probation. He was also mandated to register as a sex offender under the National Sex Offender Registration and Notification Act. Mr. Epstein served 13 of his 18-month incarceration and then successfully completed 12 months of probation. It is unclear whether he followed the sex offender registration guidelines in each place he owned a residence.

In regard to pending charges, Mr. Epstein was formally charged with Sex Trafficking Conspiracy in violation of 18 U.S.C. § 371 and Sex Trafficking in violation of 18 U.S.C. § 1591(a), (b) (2), 2 on July 2, 2019. Specifically, he was accused of sexually exploiting and abusing minor females over the course of several years. Charging documents allege Mr. Epstein enticed and recruited minor females to engage in sexual activity. The minor females were reportedly compensated with cash following the sexual encounters and some were encouraged to find other minor females to accompany them to Mr. Epstein's residences in New York or Florida. He pleaded not guilty to these charges and was in pretrial status at the time of his death.

In a 37-page Decision & Order Remanding the Defendant, signed by Judge Richard M. Berman on July 18, 2019, 18 pages were dedicated to detailing the danger Mr. Epstein posed to others and the community. The document also alleged he was a flight risk. As a result, Mr. Epstein's proposed bail package was determined to be inadequate. He was denied pretrial release and held on remand.

Institutional History: On July 6, 2019, Mr. Epstein was arrested at Teterboro Airport in New Jersey upon his return from Paris, France. It is unknown whether he was anticipating this arrest. He was transported to MCC New York and keyed into SENTRY at 9:24 p.m. that evening. Mr. Epstein was placed in a general population housing unit for approximately 22 hours. On July 7, 2019, at approximately 7:20 p.m. he was moved to the Special Housing Unit (SHU) pending reclassification due to the significant increase in media coverage and awareness of his notoriety among the inmate population.

With regard to his adjustment to a correctional setting, Mr. Epstein received one incident report while in BOP custody for Self-Mutilation on July 23, 2019. As of August 15, 2019, the incident report had been expunged though it is unclear why it had been expunged and whether Mr. Epstein knew this. Also, a review of financial transactions associated with Mr. Epstein's prison account revealed one of his attorneys was depositing funds into his cellmate's (inmate [REDACTED]) commissary account for unknown reasons.

HEALTH CARE AND PERSONALITY DESCRIPTION

BOP Electronic Medical Records (BEMR) indicate Mr. Epstein was diagnosed with hyperlipidemia, sleep apnea, hypertension, constipation, prediabetes, neuralgia, and neuritis unspecified. He was prescribed the following medications: docusate sodium, milk of magnesia, omega 3, methylprednisone, and bisacodyl. Mr. Epstein was also prescribed insulin, and the prescription required him to go to the institution pharmacy for administration of this medication. However, the dates for which it was prescribed have a notation indicating "dose not indicated," thus it does not appear insulin was routinely medically necessary. The rest of the medications prescribed were self-carry. He also had a continuous positive airway pressure (CPAP) machine which is typically used to treat sleep apnea. Mr. Epstein was provided with his personal CPAP machine on July 30, 2019, per BEMR.

In regard to mental health history and treatment, there are no known available records. Any records that may have been maintained relating to Mr. Epstein's incarceration in Florida were not available for review as of the date of this report. With regard to Psychology Data System records in BEMR (PDS-BEMR), Dr. [REDACTED], Forensic Psychologist at MCC New York completed a routine Intake Screening on July 8, 2019. During this screening, Mr. Epstein denied any history of mental health problems, substance abuse, and treatment. No symptoms of mental illness were observed. He was classified as Mental Health Care Level 1 and was not diagnosed with a mental illness.

Following a consultation with Dr. [REDACTED], National Suicide Prevention Coordinator on July 8, 2019, Dr. [REDACTED], Chief Psychologist at MCC New York determined Mr. Epstein should be pre-emptively evaluated for suicide risk upon his return from court. Primary consideration was given to his various risk factors for suicide such as his high profile case and media attention, pending sex offense charges, pre-trial status, and an ongoing court proceeding. Mr. Epstein returned from court on July 8, 2019, after normal business hours. He denied suicidal

thoughts at that time, but due to the potential for other risk factors listed above, the on-call psychologist placed Mr. Epstein on Psychological Observation in one of the suicide watch cells until he could be assessed in person by a BOP psychologist. Psychological Observation is a form of individual monitoring that is less restrictive than Suicide Watch. It is used for inmates who are stabilizing and not yet prepared for placement in general population or restrictive housing. It is often used to transition inmates off of Suicide Watch in order to monitor their transition and safety after an acute suicidal crisis. On July 9, 2019, Mr. Epstein underwent a formal, in-person suicide risk assessment with Dr. [REDACTED]. She determined that, while suicide watch was not warranted at that time, Mr. Epstein should remain on Psychological Observation status out of an abundance of caution. He was removed from Psychological Observation on July 10, 2019.

On July 23, 2019, Dr. [REDACTED], the on-call psychologist was notified Mr. Epstein had been found in his cell with a piece of orange cloth around his neck. Reportedly, he was observed lying in the fetal position on the floor with a noose around his neck. Medical staff evaluated Mr. Epstein and found friction marks and superficial reddening of the neck skin and one knee. He was placed on suicide watch by the Operations Lieutenant at approximately 1:40 a.m. pending a formal in-person suicide risk assessment. Dr. [REDACTED], Staff Psychologist at MCC New York, assessed Mr. Epstein for risk of suicide later in the morning of July 23, 2019, and determined he should remain on suicide watch. Mr. Epstein denied any knowledge of how he received marks on his neck and initially informed staff he believed his cellmate, [REDACTED], had attempted to kill him. Special Investigative Services (SIS) staff opened an investigation to assess Mr. Epstein's safety and collect facts surrounding the episode. Despite this investigation, staff was unable to determine whether he was assaulted or engaged in self-directed violence. Mr. Epstein was removed from suicide watch on July 24, 2019, after 31 hours and 5 minutes. Thereafter, he remained in the suicide watch cell and was placed on Psychological Observation, where he remained housed until July 30, 2019, according to PDS-BEMR records. A discrepancy exists regarding when he was removed from Psychological Observation. His cell assignment, per SENTRY, indicates he was transferred back to the Special Housing Unit (SHU) on July 29, 2019, whereas PDS-BEMR indicates he was removed from Psychological Observation on July 30, 2019, at approximately 8:15 a.m.

Mr. Epstein attended a court hearing on July 31, 2019, and, upon his return, the United States Marshals Service (USMS) provided paperwork to Receiving and Discharge (R&D) staff that noted "suicidal tendencies." Dr. [REDACTED] was notified on August 1, 2019, about this paperwork. She consulted with Dr. [REDACTED] and then met with Mr. Epstein to conduct a suicide risk assessment. She determined suicide watch was not warranted at that time.

Mr. Epstein remained classified as a Mental Health Care Level 1 throughout his time at MCC New York. During his contacts with psychologists, Mr. Epstein routinely denied current mental health symptoms to include suicidal ideation, and he did not exhibit symptoms of a serious mental illness. However, there was evidence Mr. Epstein was experiencing challenges

adjusting to his environment and changes in his lifestyle. He reported frequent complaints of difficulty sleeping. He did not have access to his CPAP machine until it was reportedly provided to him on July 30, 2019. Mr. Epstein also reported he was bothered by noise in the SHU. At times, he noted concerns related to his safety in SHU or on a general population housing unit. On two occasions, July 26, 2019, and July 27, 2019, he described himself as a coward and as someone who does not like pain. On July 28, 2019, he told Dr. [REDACTED] the toilet in his cell would not stop flushing for an extended period of time, and he then took to sitting in the corner with his hands over his ears. Mr. Epstein indicated he was agitated following this incident and was unable to sleep that night.

ANTECEDENT CIRCUMSTANCES

Mr. Epstein entered BOP custody on July 6, 2019, with a history of convictions for sexual offenses and allegations comprised of more serious charges. The current indictment alleged sexual crimes against minors, and he was facing up to 45 years in prison. On July 18, 2019, Mr. Epstein's request for bail and pretrial release was denied.

On July 23, 2019, Mr. Epstein was found unresponsive in his cell. The motivation and context were never fully determined. After 31 hours and 5 minutes on Suicide Watch, he was then placed on Psychological Observation. On July 30, 2019, Mr. Epstein was removed from Psychological Observation. Dr. [REDACTED] sent an e-mail reporting Mr. Epstein had been removed from Psychological Observation and needed to be housed with an appropriate cellmate. This e-mail was sent to 71 MCC New York staff and, as of August 13, 2019, only 27 staff members had opened the message.

On August 9, 2019, a federal court unsealed approximately 2,000 pages of documents into the public domain. These included graphic allegations against Mr. Epstein. Included was a book order receipt for titles such as *SM 101: A Realistic Introduction*; *SlaveCraft: Roadmaps for Erotic Servitude*; and *Training with Miss Abernathy: A Workbook for Erotic Slaves and Their Owners*. Additional high profile public figures were also named in the released documents. The documents were part of a defamation lawsuit filed by [REDACTED], a woman who alleged Mr. Epstein had victimized her, against a British socialite, Ghislaine Maxwell, who was Mr. Epstein's ex-girlfriend, associate, and alleged to have assisted with his criminal activities. According to staff report, Mr. Epstein was afforded telephone calls on two different days although it is unknown whether they were legal or social calls. No recording of the calls exist and it is not known with whom he was speaking. One occurred on or around July 16, 2019, and the other on August 9, 2019. Legal calls are not monitored, and would not be recorded. A social call would be recorded; given the limited information known about Mr. Epstein, knowledge of the content of any social calls would have been crucial to helping staff work with him.

Following his final telephone call on the evening of August 9, 2019, Mr. Epstein was moved into his SHU cell. He was single-celled at that time because his cellmate ([REDACTED] #85993-054)

did not return from court. The need for a cellmate was communicated between Day Watch (DW) and Evening Watch (EW) shifts in the SHU, but no cellmate was placed with him by the EW staff. According to a memorandum from Senior Officer Specialist [REDACTED], SHU staff were informed at approximately 1:50 p.m. that Mr. Epstein's cellmate would likely not return from court. Furthermore, Officer [REDACTED] noted Mr. Epstein would need a cellmate upon arrival from his attorney visit.

A review of the 30-minute rounds forms indicate unit rounds were completed for the entire MW shift on August 10, 2019. However, a memorandum from Lieutenant [REDACTED] indicates Officer Tova Noel and Material Handler Supervisor Michael Thomas made a statement after Mr. Epstein's death that they did not complete proper 30-minute rounds at 3:00 a.m. or 5:00 a.m.

DESCRIPTION OF SCENE

A detailed description of the scene was unavailable because the officers who discovered Mr. Epstein did not write memorandums and could not be interviewed. According to the Report of Incident, on August 10, 2019, at approximately 6:33 a.m., while serving the breakfast meal in the SHU, Range 9 South, Mr. Epstein was found unresponsive in his cell. Staff reportedly called for medical assistance, activated the body alarm, and began life-saving measures. Arriving staff stated they brought an automated external defibrillator (AED) and stretcher. Cardiopulmonary resuscitation (CPR) reportedly continued while the AED was placed on Mr. Epstein. The AED reportedly indicated no shock advised and CPR was continued. Mr. Epstein was escorted to Health Services at approximately 6:39 a.m., and Emergency Medical Services (EMS) arrived at 6:43 a.m. He was transported to the local hospital at approximately 7:10 a.m. Mr. Epstein was pronounced deceased at 7:36 a.m. It was not possible to confirm this timeline without viewing video footage.

CONCLUSIONS/RECOMMENDATIONS

A general appreciation of risk factors for suicide specific to sex offenders is necessary when reviewing Mr. Epstein's death. These factors, as well as more general risk factors for suicide, were likely present. There are several common factors that increase risk for suicide in individuals with a history of a sexual offense. These include stigma due to the nature of sexually-based crimes (both within society and the prison system), a disruption of the ability to utilize sex as a coping mechanism (which can lead to increased levels of distress and negative affect), and grief about loss experienced in regards to arrest. This grief may be secondary to the loss of former lifestyle, loss of physical items or collections related to sexual offenses, and/or the loss of perceived relationships with victims. Other factors that may increase risk for suicide among individuals accused of a sex offense include safety concerns, potentially long sentences, and lack of skills necessary to navigate social relationships in prison.

Mr. Epstein was a high-profile, pretrial detainee awaiting trial on sex trafficking offenses. He had been a successful, wealthy businessman with a number of high-profile acquaintances that he accumulated through a combination of charisma, charm, and intelligence. Despite his many associates, he had limited significant or deep interpersonal ties. Although Mr. Epstein appeared

to cultivate a large social and professional network, he was estranged from his only brother. Indeed, his identity appeared to be based on his wealth, power, and association with other high-profile individuals. Approximately two-and-a-half weeks before his death, Mr. Epstein appeared to attempt suicide, but ultimately denied it was a suicide attempt. He was convincing in his denial. On that occasion, he was saved because his cellmate notified BOP staff. In the weeks before his death, he made statements that he was "a coward" and was having difficulty adapting to his diminished circumstances. He also frequently referenced poor sleep and an inability to tolerate the noise of prison. On the day before his death, a number of documents in his case were unsealed, further eroding his previously-enjoyed elevated status and potentially implicating some of his associates. The lack of significant interpersonal connections, a complete loss of his status in both the community and among associates, and the idea of potentially spending his life in prison were likely factors contributing to Mr. Epstein's suicide.

The following recommendations concern institution operations:

1. Single Celling: It is recommended that all inmates be double-celled unless safety concerns or an odd number of inmates precludes this. Priority should be given to inmates with a history of mental illness, self-directed violence, recent stressors (e.g., losses, newly sentenced, etc.)

It is recommended that a system of control be implemented explaining who will be notified when a Suicide Watch or Psychological Observation ends and how that communication will take place. Because this is a life safety issue, the system of control, once approved by the warden, should be reviewed in formal meetings such as staff recalls, department head meetings, and lieutenants meetings.

2. Rounds: 30-minute rounds are required by P5500.14, Correctional Services Procedures Manual.
3. Cellmate Assignments: When Mr. Epstein was placed in SHU on July 7, 2019, Executive Staff decided Mr. [REDACTED] would be his cellmate. As explained by Dr. [REDACTED], input was not sought from Psychology Services and it is not clear if or how sex offender-specific needs and associated risk were incorporated into the housing plan. Mr. [REDACTED] was also a high profile inmate—an ex-police officer charged in multiple murders. However, he and Mr. Epstein did not share the risk associated with being a sex offender and their pairing may have aggravated Mr. Epstein's risk for self-directed violence. In an effort to treat Mr. Epstein the same as other inmates, a statement repeated by multiple staff, Executive Staff may have inadvertently overlooked the need to consider unique risk factors associated with individuals who have been charged with and convicted of a sex offense. On July 25, 2019, Dr. [REDACTED] sent an e-mail to [REDACTED], Associate Warden explaining a consultation between Dr. [REDACTED] and Dr. [REDACTED], National Suicide Prevention Coordinator. In the e-mail, Dr. [REDACTED]

reviewed the consult and recommendation from the Psychology Services Branch, Central Office that Mr. Epstein be housed with another inmate who had also been accused of committing a sex offense. There is no evidence this information was considered beyond this e-mail, and Mr. Epstein was never housed with another inmate charged or convicted of a sexual offense.

It is recommended Executive Staff and Correctional Services staff include a psychologist in decisions about cellmates as a means of incorporating expertise about suicide risk, mental health needs, and interventions for psychological stability.

4. Documentation Accuracy: On July 23, 2019, Mr. Epstein was found unresponsive in his cell. He had abrasions on his neck and knee. There are inconsistencies between documents describing the circumstances of the scene. In a General Administrative Note in PDS-BEMR, Dr. [REDACTED] documented information received from Operations Lieutenant [REDACTED] that Mr. Epstein, "was found with a string loosely hanging around his neck." In contrast, Officer [REDACTED], who responded to this emergency, wrote a memorandum dated July 23, 2019. In that memorandum, Officer [REDACTED] wrote he saw Mr. Epstein "laying down near his bunk with what appeared to be a piece of handmade orange cloth around his neck." It is critical that all descriptions of the incident accurately reflect objective evidence.

Officer [REDACTED] wrote Mr. Epstein an incident report for Self-Mutilation on July 23, 2019, after he was found unresponsive in his cell but prior to having the necessary facts to determine whether he likely engaged in a Bureau violation. BOP policy expects staff to write an incident report within 24 hours of having the information that an inmate likely violated BOP rules but without making a presumptive decision about guilt. A Special Investigative Services Threat Assessment was completed August 2, 2019, but results were inconclusive as to whether Mr. Epstein engaged in self-directed violence, willingly fought with his cellmate, or was assaulted by his cellmate. It is recommended that staff remain open to all reasonable explanations for a behavior and take the appropriate actions when a final determination is made. Although the incident report was later expunged, inmates frequently experience significant stress when they contemplate the potential consequences associated with findings of guilt.

Dr. [REDACTED] entered a Psychology Services Intake Screening into PDS-BEMR on July 8, 2010. The document has three typographical errors. She selected the No Sexual Offense Convictions check box when, in fact, Mr. Epstein was previously convicted of Solicitation of Prostitution and Procuring a Person Under the Age of 18 for Prostitution. Second, Mr. Epstein was erroneously identified as a Black male in this document. Finally, there is one instance where he was mistakenly referred to as Mr. Brown.

Dr. ██████████ completed a Risk of Sexual Abusiveness document on July 8, 2019. She marked "History of prior prison sexual predation" in the affirmative. This is not accurate.

██████████ Mid-Level Practitioner, completed a History and Physical on July 9, 2019. An Intake Screening should have been conducted within 24 hours of his entry into Bureau custody which was on July 6, 2019, according to P6031.04, Patient Care.

Officer ██████████ was responsible for observing Mr. Epstein and documenting his behavior while on suicide watch on July 23, 2019. Officer ██████████ mistakenly used a Suicide Watch Log Book intended for inmate companion documentation between 1:40 a.m. and 6:00 a.m. on July 23, 2019, when he should have been using the Staff Suicide Watch Log Book. Ms. ██████████ Drug Treatment Specialist, reportedly noticed this error and subsequently hand copied all of Officer ██████████ entries from 1:40 a.m. to 6:00 a.m. into a Staff Suicide Watch Log Book. She then initialed these entries, and this makes it appear as if she was the one conducting the watch. This information was discovered and conveyed in an e-mail from Ms. ██████████ Associate Warden to Dr. ██████████ with a carbon copy to Warden ██████████ on August 12, 2019. Of note, Ms. ██████████ did not make an entry explaining why she was making the log book changes. Additionally, Ms. ██████████ then wrote entries for 6:15, 6:30, 6:45 and 7:00 a.m. in the Staff Suicide Watch Log Book. These were not a part of the original entries made by Officer ██████████ nor was Ms. ██████████ assigned to work the Suicide Watch post. Due to the inability to interview staff at this time, it is unknown why Ms. ██████████ attempted to correct Officer ██████████ error, or made any of the subsequent log entries. It is recommended that if a staff member makes an entry error (e.g., writes in the incorrect suicide watch log book), the staff member should describe the error in the correct log book, to include indicating when they became aware of the error. The staff member should then notify the Chief Psychologist.

A review of Special Housing Unit Records (BP-A0292) revealed a number of incomplete entries. This document is used to monitor provision and receipt of basic services such as recreation, medical rounds, showers, meal consumption, etc. The Officer in Charge signature is missing on 10 occasions and a medical provider's signature is missing in seven instances. There are six instances in which it is not clear if Mr. Epstein ate his meal. There are nine instances in which it is not clear if Mr. Epstein took a shower. There are ten instances in which it is not clear if Mr. Epstein was offered recreation. P5500.15, Correctional Services Manual requires accurate and complete information on the BP-A0292.

A review of Psychology Observation Log Books revealed significant discrepancies from the approved Psychological Observation Procedural Memorandum, dated April 15, 2019. A Correctional Officer is required to complete hourly rounds and sign the log book; 179

out of 183 round signatures were missing. The lieutenant is required to sign the log book one time per shift and signatures were missing in 10 of 23 instances. A Physician Assistant is required to sign one time per shift and 16 of 16 instances were missing. It is recommended that a further review of Psychological Observation procedures be conducted.

5. Telephone Calls: In a PDS-BEMR note written by Dr. [REDACTED] on July 16, 2019, she was informed by an unnamed staff member that a lieutenant facilitated two telephone calls for Mr. Epstein. It is unknown when and to whom these calls were placed and no evidence that they took place on a monitored telephone.

According to a memorandum from Unit Manager [REDACTED] on August 10, 2019, Mr. Epstein terminated his legal visit early on August 9, 2019, in order to place a telephone call to his family. Mr. [REDACTED] (who was the Institutional Duty Officer that week) escorted Mr. Epstein to SHU around 7:00 p.m. that evening and he was placed in the shower area on G tier. While there, he was provided the telephone to make a call. Since Mr. Epstein reportedly did not have his PAC or PIN number, which is required to use the inmate telephone system, the Unit Manager placed the call, dialing a number that reportedly began with area code 347. Mr. Epstein told Mr. [REDACTED] he was calling his mother who, according to public records, has been deceased since 2004.

It is recommended that all telephone calls, other than legal calls, be made on monitored lines to be available for post-call review or on a speaker phone so staff can monitor what is discussed.

6. Direct Observation: Mr. Epstein was on suicide watch from July 23, 2019, until July 24, 2019. While on suicide watch on July 23, 2019, Mr. Epstein attended an attorney visit from approximately 12:40 p.m. until 7:15 p.m. During this time, he was without "direct, continuous observation" by a dedicated BOP staff member as required by P5324.08. While on Psychological Observation, he attended attorney visits on July 24, 2019, for 11.25 hours; on July 25, 2019, for 11.25 hours; on July 26, 2019, for 9.25 hours; on July 27, 2019, for 11.33 hours; on July 28, 2019, for 10.5 hours; and on July 29, 2019, for 8 hours. On July 30, 2019, Psychology Observation was terminated. During these visits, continuous observation by a dedicated BOP staff member was not maintained as required by MCC New York's Procedural Memorandum for Psychological Observation.
7. Follow-Up: Mr. Epstein arrived at MCC New York on Saturday, July 6, 2019. While conducting the 10:00 p.m. institution count that evening, [REDACTED], Facilities Assistant reported she observed Mr. Epstein in his cell. In an e-mail she sent to Drs. [REDACTED] and [REDACTED] and Lieutenant [REDACTED] later that evening, she described Mr. Epstein as "distracted, sad and a little confused." She said she then asked Mr. Epstein if he was

okay, and he reportedly said he was. However, Ms. [REDACTED] noted in her e-mail she was not convinced of this, adding, "He seems dazed and withdrawn." She went on to say, "So just to be on the safe side and prevent any suicidal thoughts can someone from Psychology come and talk with him." Despite the fact that Lieutenant [REDACTED] opened the e-mail there is no evidence that he contacted the on-call psychologist as is required by P5324.08, Suicide Prevention Program. Additionally, if Ms. [REDACTED] was concerned about suicide risk, P5324.08, Suicide Prevention Program, requires her to maintain direct, continuous observation of Mr. Epstein. When Dr. [REDACTED] opened the e-mail the following Monday morning, Mr. Epstein was evaluated by Dr. [REDACTED] at approximately 9:30 a.m.

Mr. Epstein was denied bail on Thursday, July 18, 2019. This was a significant disappointment for Mr. Epstein and likely challenged his ability and willingness to adapt to incarceration. Given the potential impact of the judge's decision, a psychologist should have assessed Mr. Epstein's mental status upon his return to the institution. The BOP developed a SENTRY assignment of PSY ALERT for purposes such as this. Specifically PSY ALERT is used "to ensure, if movement occurs, that all staff consider the special psychological and management-related risks associated with the inmate." Furthermore, P5324.07, SENTRY Psychology Alert Function states, "When a decision to move [any PSY ALERT] inmate occurs, any special psychological needs of the inmate are reviewed and considered by Psychology Services staff [and] any safety and security concerns are highlighted for non-Psychology Services staff." Psychologists should use the PSY ALERT assignment more frequently with high profile cases and with inmates who have a history or charge of sex offense. Both of these groups of inmates are susceptible to exaggerated or unrealistic fears about correctional settings and experience stress associated during movement and periods of transition (e.g., cell/unit changes, movement to and from court, institutional movement, and release of information through the media).

Mr. Epstein was reportedly in court on July 31, 2019. It is unknown what time he departed or returned to MCC New York because this information was not entered in SENTRY. Regardless, upon his return, the United States Marshals Service (USMS) provided R&D staff with a Prisoner Custody Alert Notice regarding Mr. Epstein. The notice indicated Mr. Epstein had "MTL Mental Concerns Suicidal Tendencies." The USMS requested R&D staff sign the form, and they then departed with the signed copy. On August 1, 2019, at 8:46 a.m., Dr. [REDACTED] sent Dr. [REDACTED] an e-mail reporting she had just become aware of the above information. In the absence of additional information about this notation, this should have been considered a referral to Psychology Services about a potentially suicidal inmate and procedures should have been followed as outlined in P5324.08, Suicide Prevention Program. Specifically, when a staff member becomes aware an inmate may be thinking about suicide during normal working hours, that staff member must contact Psychology Services and maintain the inmate under direct,

continuous observation until he is placed on Suicide Watch or seen by a psychologist. There is no evidence Mr. Epstein was monitored under these conditions from the time he returned from court until he was seen by Dr. [REDACTED] for a suicide risk assessment on August 1, 2019, at approximately 1:30 p.m.

8. Inmate Accountability and Assignment Accuracy: According to a SENTRY quarters roster generated on August 10, 2019, at 12:51 a.m., there were three inmates assigned to Mr. Epstein's SHU cell, Z04-206LAD, including him, at the time of his death. However, his SHU cell was only a double occupancy cell. Inmate [REDACTED] (#86710-054), inmate [REDACTED] (#79793-054), and Mr. Epstein were all assigned to the same cell. On August 13, 2019, at 12:06 p.m. and 12:08 p.m., a quarters history roster was generated for inmate [REDACTED] and [REDACTED], respectively. Inmate [REDACTED]'s cell assignment was Z04-206LAD from August 5, 2019, until August 11, 2019, when he was moved to cell Z04-212UAD. Inmate [REDACTED]'s cell assignment was Z04-206UAD from August 1, 2019, until August 11, 2019, when he was moved to cell Z04-207LAD. A quarters history roster was generated for Mr. Epstein on August 13, 2019, at 9:07 a.m. His cell assignment was Z04-206LAD from July 29, 2019, until August 10, 2019.

On Monday, August 12, 2019, photographs of nametags on SHU cell doors and SHU locator forms were sent to the Correctional Service Department in the Northeast Region. The SHU locator form is dated August 9, 2019. It shows inmate [REDACTED] in cell 207L (SENTRY states he was moved to this cell on August 11, 2019), inmate [REDACTED] in cell 212U (SENTRY states he was moved to this cell on August 11, 2019), inmate Epstein in cell 220L (SENTRY never shows him in this cell) along with inmate [REDACTED] (#85993-054). The locator shows inmate [REDACTED] (#92299-054) and inmate [REDACTED] (#60685-050) in cell 206. The photo sheets show the cell being 220 with inmates Epstein and [REDACTED], identification cards on the door. Inmate [REDACTED], Reg. No. 85993-054 was in cell Z06-220U from August 5, 2019 to August 9, 2019.

MCC New York has four suicide watch cells and each is for single occupancy use. The suicide watch cells are located in Health Services. Each cell is abbreviated with the unit code H01 in SENTRY followed by the four-digit cell number. The doors are identified by a painted number from one to four. Two reviews were conducted. The first revealed Mr. Epstein was in H01-001L according to SENTRY but the Suicide Watch Log Books indicate he was in cell 4. A second review was conducted on August 13, 2019, while there were four inmates on in these cells. SENTRY showed two inmates assigned to H01-001L, one assigned to H01-002L, and the fourth inmate assigned to a general population housing unit. Through physical observation of the dedicated suicide watch cells there were four H01 cells, however a review of the BOPWARE Inmate Housing Format, only shows three cells.

Inmate movement and assignments are not accurately reflected in SENTRY as required by P5500.14, Correctional Service Procedures Manual.

9. Attorney Log Books: Four log books were not secured following Mr. Epstein's death. Specifically, three Attorney Log Books located in the Attorney Visiting and Front Lobby areas and an Inmate Search Log Book located in the Attorney Visiting area were not secured. All four books were still in use at the outset of the reconstruction and after the reconstruction team advised staff to secure them. P5324.08 states, "In the event of a suicide, institution staff, particularly Correctional Services staff, and other law enforcement personnel, will handle the site with the same level of protection as any crime scene in which a death has occurred." This policy further states, "All possible evidence and documentation will be preserved to provide data and support for subsequent investigators doing a psychological reconstruction."

Further, a review of the attorney log books identified many errors and signify a systemic concern. For example, there were two concurrently open attorney log books in the Attorney Visiting area. Further, the different purposes of the two attorney log books, one in the Attorney Visit area and one in the Front Lobby, could not be explained. BOP staff were unable to articulate a system of control for the log books, and during the reconstruction, some of the log books could not be accounted for. Within the log books, entries were made out of chronological order, attorneys did not consistently sign in and out, significant information was illegible or missing, columns were not consistently labeled, log book opening and closing dates were inconsistent, and the cover had been torn off of several books. At the current time, these log books are not functioning as an adequate system of control and monitoring.

10. Automatic External Defibrillators: A review of available AEDs in the institution revealed that the list used for accountability and inspection purposes was inaccurate and incomplete.
11. Post Orders & SHU Training: SHU Post Orders Sign-In Sheets were reviewed for the 3rd Quarter, spanning June 9, 2019, to September 7, 2019. Officer [REDACTED] failed to sign post orders for SHU #3 post.

Quarterly SHU Training Sign-In Sheets were reviewed. The 2019 3rd Quarter SHU Training was conducted on June 6, 2019. Three staff assigned to the 3rd Quarter SHU Roster in SHU did not attend or receive the SHU Training: Officer [REDACTED], Officer [REDACTED], and Officer [REDACTED].

12. Staffing: The Drug Abuse Program Coordinator position at MCC New York was abolished during Phase I of the staff realignment during fiscal year 2018. Re-establishing

the Drug Abuse Program Coordinator position would provide the institution with an additional supervisory psychologist to provide critical clinical services.

Staffing in the Correctional Services department is relevant to the reconstruction. However, the details about this topic are provided in an After Action Review completed separately from this report.

13. Sex Offense Risk Factors: A broad understanding of risk factors associated with sex offenders, by staff at MCC New York, did not appear to be present in all staff but was vital to his adjustment and safety in prison. A more focused management strategy is recommended, particularly in complex and high profile cases. Supplemental training on sex-offender specific risk factors is recommended for all staff and should be provided by Executive Staff and Psychology Services.

DOCUMENTS EXAMINED

TRU-INTEL Download Report of Incident (583), 586, & Global Report
TRUVIEW – Money Exchanged; Phone, Email, & Visitor Lists; Calls; Messages; Visits; Timeline
TRU-SCOPE – Logs, High Risk Inmates, Inmates Lists, etc.
Staff Memorandums
Staff E-Mail
Photographs of Scene; Deceased, Autopsy
Video Showing Scene and Staff Response
Sentry Documentation
SIS Case File Index
Psychology File PDS-BEMR
Psychological Observation Procedural Memorandum
Post Orders
Lieutenant Logs
Attorney Logs
Staff Roster
Medical Information/Records (BEMR)
BOP Twenty-Four Hour Death Report
Pre-Sentence Report
Note(s) Left Behind by Deceased
Time Line
Autopsy Request & Report
Inmate Central File
Court Return Screening Form
Prisoner Remand Form (If applicable)
USM 129 Individual Custody/Detention Report (If applicable)
Prisoner Custody Alert Notice
Staff Sign-In Log 1 Week Prior to Suicide (If applicable)
Detention Orders (If applicable)
30 minute SHU rounds
BP 292's & 295's

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
UNITED STATES OF AMERICA,

Government,

- against -

JEFFREY EPSTEIN,

Defendant.
-----X

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 7/18/19

19 CR. 490 (RMB)

DECISION & ORDER
REMANDING DEFENDANT

A. Background

This ruling follows the Court's bail hearing held on July 15, 2019. The issue before the Court is whether the Defendant should continue to be remanded (incarcerated) pending trial or whether he should be granted release while the case proceeds. No matter the answer to this question and no matter what has been said in Court in analyzing the matter, this is a criminal case and the Defendant, Jeffrey Epstein, is innocent of the Federal charges alleged against him now and until such time, if it comes, that a jury or the Court finds (after fair and thorough consideration of the facts and the law) that he is guilty. See Transcript, dated July 8, 2019 ("7/8/19 Tr."), at 2-3; Transcript, dated July 15, 2019 ("7/15/19 Tr."), at 40. It should also be borne in mind that the Court has not (yet) been presented with a motion to dismiss the Indictment.

This is a federal as opposed to a state case. We proceed under federal law and federal rules. The key federal statute that applies here is 18 U.S.C. § 1591 which sets forth the crime of sex trafficking with which Mr. Epstein is charged. Mr. Epstein is also charged with conspiring with others to commit sex trafficking under 18 U.S.C. § 371.

With respect to the issue of remand versus release, 18 U.S.C. § 3142 applies. It sets forth a presumption in favor of remand, an exception to the presumption in most cases which favors

pretrial release. § 3142 states that: “if there is probable cause to believe that the person committed . . . an offense involving a minor victim under section . . . 1591,” then **“it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community.”** 18 U.S.C. § 3142(e)(3)(E) (emphasis added); see United States v. Martir, 782 F.2d 1141, 1144 (2d Cir. 1986). The Indictment in this case was returned by a grand jury thus establishing probable cause that the defendant committed the crimes of sex trafficking and sex trafficking conspiracy. See United States v. Contreras, 776 F.2d 51, 55 (2d Cir. 1985) (“[A]n indictment returned by a duly constituted grand jury conclusively establishes the existence of probable cause for the purpose of triggering the rebuttable presumptions set forth in § 3142(e)”). In most federal cases the rebuttable presumption that applies favors pretrial release, not remand.

There is another very important issue to be considered in this case. It has to do with “victims” of the crimes charged in the Indictment. Victims refer to the “minor” girls who are alleged to have been sexually trafficked by the Defendant. Under 18 U.S.C. § 3771, victims are entitled to be heard in court, including on the question of whether the defendant is to be released or remanded. Victims have, among other things, been given the opportunity to testify at the bail hearing.

B. Counsels’ Submissions

The Government’s letter application, dated July 8, 2019, requests that the Court remand Mr. Epstein. It argues that Mr. Epstein “poses [] an acute danger to the community” and, grounded in past experience with this Defendant, that “if [Mr. Epstein is] allowed to remain out on bail, the defendant could attempt to pressure and intimidate witnesses and potential witnesses in this case, including victims and their families, and otherwise attempt to obstruct justice.” Dkt.

11, Ex. 1 at 1. The Government also contends that “[i]n light of the strength of the Government’s evidence and the substantial incarceratory term the defendant would face upon conviction [45 years], there is an extraordinary risk of flight, particularly given the defendant’s exorbitant wealth, his ownership of and access to private planes capable of international travel, and his significant international ties.” Id.

The Government also provides the following background information: “In or about 2005, the defendant was investigated by local police in Palm Beach, Florida, in connection with allegations that he had committed similar sex offenses against minor girls. The investigation ultimately also involved federal authorities, namely the U.S. Attorney’s Office for the Southern District of Florida and the FBI’s Miami Office, and included interviews with victims based in the Palm Beach area, including some of the alleged victims relevant to Count One of the instant Indictment. In the fall of 2007, the Defendant entered into a non-prosecution agreement (“NPA”) with the Southern District of Florida in connection with the conduct at issue in that investigation, which the non-prosecution agreement identified as including investigations into the defendant’s abuse of minor girls in the Palm Beach area.” Id. at 3. “In June 2008, the defendant pled guilty in [Florida] state court to one count of procuring a person under the age of 18 for prostitution, a felony, and one count of solicitation of prostitution, [also] a felony. As a result, the defendant was designated as a sex offender with registration requirements under the national Sex Offender Registration and Notification Act.” Id.

The Defense moved on July 11, 2019, for pretrial release of Mr. Epstein, arguing that “Mr. Epstein’s strict compliance with the various monitoring requirements associated with his sex-offender registration actually decrease[s] any danger that he might otherwise pose” and also that “Mr. Epstein has never once attempted to flee the United States.” Dkt. 6 at 1, 12. The

Defense proposes what they describe as “a stringent set of [14] conditions that will effectively guarantee [Mr. Epstein’s] appearance and abate any conceivable danger he’s claimed to present.” Id. at 1. The 14 conditions do not include private security guards 24/7. The 14 conditions do include: (1) “Home detention in Mr. Epstein’s Manhattan residence, with permission to leave only for medical appointments as approved by Pretrial Services, including (at the Court’s discretion) the installation of surveillance cameras at the front and rear entrances to ensure compliance”; (2) “Electronic monitoring with a Global Positioning System”; (3) “An agreement not to seek or obtain any new passport during the pendency of this matter”; (4) “Consent to U.S. extradition from any country and waiver of all rights against such [e]xtradition”; (5) “A substantial [unspecified] personal recognizance bond in an amount set by the Court after reviewing additional information regarding Mr. Epstein’s finances”; (6) “The bond shall be secured by a mortgage on the Manhattan residence, valued at roughly \$77 million. Mr. Epstein’s private jet can be pledged as further collateral”; (7) “Mr. Epstein’s brother Mark will serve as a co-surety of the bond, which shall be further secured by a mortgage on Mark’s home in West Palm Beach, Florida. Mr. Epstein’s friend David Mitchell will also serve as a co-surety and pledge his investment interests in two properties to secure the bond”; (8) “Mr. Epstein shall deregister or otherwise ground his private jet”; (9) Mr. Epstein “shall demobilize, ground, and/or deregister all vehicles or any other means of transportation in the New York area, providing particularized information as to each vehicle’s location;” (10) “Mr. Epstein will provide Pretrial Services and/or the government random access to his residence”; (11) “No person shall enter the residence, other than Mr. Epstein and his attorneys, without prior approval from Pretrial Services and/or the Court”; (12) “Mr. Epstein will report daily by telephone to Pretrial Services (or on any other schedule the Court deems appropriate)”; (13) “A Trustee or Trustees will be appointed to

live in Mr. Epstein's residence and report any violation to Pretrial Services and/or the Court"; (14) "Any other condition the Court deems necessary to reasonably assure Mr. Epstein's appearance." Id. at 3-4. The Defense also proposes as a "fallback" "round-the-clock, privately funded security guards [which] will virtually guarantee - not just reasonably assure - Mr. Epstein's presence in the circumstances of this case." Id. at 10. The bail package originally was not accompanied by a financial statement reflecting Mr. Epstein's finances. However, on July 12, 2019, the Defense filed a one-page document which includes five groups of assets owned by Mr. Epstein totaling \$559,120,954. Dkt. 14 at 18.

The Government responded to the Defense motion on July 12, 2019, arguing, among other things, that Mr. Epstein "has a history of obstruction and manipulation of witnesses, including . . . as recently as within the past year, when media reports about his conduct [in Florida] reemerged." Dkt. 11 at 1. The Government filing was made against a "backdrop of significant—and rapidly-expanding—evidence, serious charges, and the prospect of a lengthy prison sentence." Id. It contends that the defendant's proposed conditions of release are "woefully inadequate." Id.

The Court also received a letter from the Government, dated July 16, 2019, providing, among other things, details about allegedly suspicious payments made by the Defendant in 2018; a Palm Beach, Florida police report; Mr. Epstein's expired Austrian passport in another name but with Mr. Epstein's photo; and a pile of cash and diamonds found in Mr. Epstein's safe. For example, the Government says: "[R]ecords from Institution-1 show that on or about November 30, 2018, or two days after the series in the Miami Herald began, the defendant wired \$100,000 from a trust account he controlled to . . . , an individual named as a potential co-conspirator." Dkt. 23 at 1. And, "on or about December 3, 2018, the defendant wired \$250,000 from the same

trust account to . . . , [an individual] who was also named as a potential co-conspirator.” Id. at 1-2. According to the Government, the second individual “is also one of the employees identified in the Indictment, which alleges that she and two other identified employees facilitated the defendant’s trafficking of minors by, among other things, contacting victims and scheduling their sexual encounters with the defendant at his residences in Manhattan and Palm Beach, Florida.” Id. at 2.

By letter, dated July 16, 2019, Defense counsel states, among other things, that the Court should reject the idea that “there’s literally nothing a person of Epstein’s means could say, do or pledge to rebut the operative presumption and make himself eligible for release.” Dkt. 24 at 2. “Epstein contends that § 1591 and the concomitant remand presumption do not contemplate or cover the core conduct at issue here: performing sexual massages for money.” Id. at 1-2 n.1. Defense counsel also states that “Epstein certainly recognizes the Court’s request for further transparency and is committed to providing a complete and accurate disclosure. Accordingly, we propose that the Court preliminarily accept the initial [financial] disclosure proffered last Friday and, if intending to grant bail, include a release condition directing Epstein to tender a comprehensive forensic accounting of his finances as expeditiously as practicable.” Id. at 4. By letters, dated July 16 and July 17, 2019, Defense counsel also submitted information regarding Epstein’s New Mexico sex offender registration status. Defense counsel also stated that Epstein traveled extensively over the last eight months and “invariably returned to the to the United States. That inescapable reality emphatically proves he won’t flee and entitles him to release – on any and all conditions the Court deems appropriate.” Id. at 8.

C. Indictment

A grand jury voted to indict Mr. Epstein on or about July 2, 2019. The Indictment charges Mr. Epstein with two felonies involving minor girls some as young as 14. Count I includes conspiracy to commit sex trafficking of minor girls, in violation of 18 U.S.C. § 371, and Count II includes sex trafficking of minor girls, in violation of 18 U.S.C. § 1591. It states: “[F]rom at least in or about 2002, up to and including at least in or about 2005, Jeffrey Epstein, . . . enticed and recruited, and caused to be enticed and recruited, minor girls to visit his mansion in Manhattan, New York . . . and his estate in Palm Beach, Florida, . . . to engage in sex acts with him, after which he would give the victims hundreds of dollars in cash.” Indictment, dated July 2, 2019 (“Indictment”), ¶ 2. “Moreover, and in order to maintain, and increase his supply of victims, Epstein also paid certain of his victims to recruit additional girls to be similarly abused by Epstein. In this way, Epstein created a vast network of underage victims for him to sexually exploit in locations including New York and Palm Beach.” Id.

The Indictment also charges that “the victims . . . were as young as 14 years old at the time they were abused by [Mr. Epstein] . . . and were, for various reasons, often particularly vulnerable to exploitation.” Id. ¶ 3. “Mr. Epstein intentionally sought out minors and knew that many of his victims were in fact under the age of 18, [] because, in some instances, minor victims expressly told him their age.” Id.

Following his arrest, on Monday, July 8, 2019, Mr. Epstein was arraigned and presented with the Indictment by Magistrate Judge Henry Pittman.

D. Legal Principles Governing Release Versus Remand

Under the Bail Reform Act, 18 U.S.C. § 3142, a Court can order a defendant’s detention if it determines that the defendant is either (1) a danger to the community or (2) a risk of flight.

18 U.S.C. § 3142(e). A Court does not need to find both bases are proven to order a defendant's detention. See *id.*; United States v. Blanco, 570 F. App'x 76, 78 (2d Cir. 2014). Dangerousness means that the defendant is a "danger to the safety of any other person or the community." 18 U.S.C. § 3142. A finding of dangerousness must be supported by clear and convincing evidence. See, e.g., United States v. Ferranti, 66 F.3d 540, 542 (2d Cir. 1995). "Where there is a strong probability that a person will commit additional crimes if released, the need to protect the community becomes sufficiently compelling that detention is, on balance, appropriate." United States v. Chimurenga, 760 F.2d 400, 403 (2d Cir. 1985). "[E]ven a single incident of witness tampering . . . [may be] sufficient to revoke bail." LaFontaine, 210 F.3d at 134.

To order detention based upon risk of flight, the Court must find by a preponderance of the evidence that "that no conditions could reasonably assure the defendant's presence at trial." See, e.g., United States v. Jackson, 823 F.2d 4, 5 (2d Cir. 1987); 18 U.S.C. § 3142. "[T]he constitutional limits on a detention period based on dangerousness to the community may be looser than the limits on a detention period based solely on risk of flight. In the former case, release risks injury to others, while in the latter case, release risks only the loss of a conviction." United States v. Millan, 4 F.3d 1038, 1048 (2d Cir. 1993) (quoting United States v. Orena, 986 F.2d 628, 631 (2d Cir. 1993)). A bail package that "may reasonably assure the appearance of [the defendant] at trial will not [necessarily] assure the safety of the community." United States v. Rodriguez, 950 F.2d 85, 89 (2d Cir. 1991).

The Bail Reform Act sets forth the following four factors to be considered in the release/remand analysis: (1) the nature and circumstances of the crime(s) charged; (2) the weight of the evidence against the person; (3) the history and characteristics of the defendant, including the person's character and financial resources; and (4) the seriousness of the danger posed by the

defendant's release. 18 U.S.C. § 3142(g). "The weight afforded to each factor under section 3142(g) is within the 'special province' of the district court." United States v. Paulino, 335 F. Supp. 3d 600, 610 (S.D.N.Y. 2018) (quoting United States v. Shakur, 817 F.2d 189, 196 (2d Cir. 1987)).

"The rules concerning admissibility of evidence in criminal trials do **not** apply to the presentation and consideration of information at the [release/remand] hearing." 18 U.S.C. § 3142(f)(2) (emphasis added). For example, the Government is entitled to present evidence supporting remand by way of proffer, among other means. 18 U.S.C. § 3142(f)(2); see also United States v. LaFontaine, 210 F.3d 125, 131 (2d Cir. 2000) ("bail hearings are typically informal affairs, not substitutes for trial or even for discovery"). 18 U.S.C. § 3142(f)(2)(B) expressly states that the Federal Rules of Evidence do not apply at bail hearings; thus, courts often base detention decisions on hearsay evidence. United States v. Abuhamra, 389 F.3d 309, 321 n.7 (2d Cir. 2004) "District courts [are afforded] wide discretion regarding the scope of such hearings" United States v. Bartok, 472 F. App'x 25, 27 (2d Cir. 2012).

E. The Presumption of Remand in 18 U.S.C. § 1591 Cases

A 18 U.S.C. § 1591 case involving sexual victimization of a minor is unusual in that it includes a presumption in favor of pretrial detention, reflecting the significant harm caused by such a crime. 18 U.S.C. § 3142(e)(3)(E). The presumption is that no condition or combination of conditions will reasonably assure against flight or danger to the community. United States v. English, 629 F.3d 311, 319 (2d Cir. 2011) (quoting 18 U.S.C. § 3142(e)(3)(E)). Mr. Epstein may rebut the presumption by "coming forward with evidence that he does not pose a danger to the community or a risk of flight." United States v. Mercedes, 254 F.3d 433, 436 (2d Cir. 2001). The Government retains the "ultimate burden of persuasion" that Mr. Epstein presents a danger to the

community (by clear and convincing evidence) and that Mr. Epstein presents a risk of flight (by a preponderance of the evidence). Id. Even if rebuttal evidence is presented, “the presumption favoring detention does not disappear entirely.” Id. at 436. “[It] remains a factor to be considered among those weighed by the district court.” Id.

F. Mr. Epstein Poses a Danger To Others And To the Community

The Court begins with “dangerousness” because that concept is at the heart of this case. It finds that the Government has shown by clear and convincing evidence that Mr. Epstein threatens the safety of another person and of the community, as follows on pages 10-21:

- **Victims Have Advised The Court That They Would Fear For Their Safety If Mr. Epstein Were Released**

Victims have “specifically conveyed” to the Government that any form of release of the Defendant, including home detention with full-time private guards, could “result in [their] harassment and abuse.” Dkt. 11 at 4. At the bail hearing on July 15, 2019, two victims movingly testified about their past sexual encounters with Mr. Epstein when they were minors aged 14 and 16, respectively. 7/15/19 Tr. at 72; see also S. REP. 108-191 (“CVRA Legislative History”), at 22 (In enacting the CVRA, Congress stated that “[V]ictims deserve the right to be heard at specific points in the criminal justice process,” including bail hearings. “Giving victims a voice not only improves the quality of the process but can also be expected to often provide important benefits to victims.”). Ms. [REDACTED] was introduced by her counsel, [REDACTED], and stated that she was 16 years old when she “had the misfortune of meeting Jeffrey Epstein [in] New York.” 7/15/19 Tr. at 72. [REDACTED] said that Mr. Epstein “flew [her] to New Mexico” and was “inappropriate” with her. Id. She was reluctant to go into details about her experience with Mr. Epstein. Id. at 73. [REDACTED] opposes Mr. Epstein’s pretrial release because she believes other

Epstein victims would “continu[e] to be victimized” and that Mr. Epstein’s wealth and privilege and notoriety would make it difficult for “[other] victims to come forward.” *Id.* at 72.

Ms. [REDACTED] was introduced by her counsel, [REDACTED], and said she was “sexually abused by Jeffrey Epstein starting at the age of 14.” *Id.* at 73-74. She asked the Court to “keep [Mr. Epstein] in detention [] for the safety of any other girls out there that are going through what [she’s] going through.” *Id.* at 74. Ms. [REDACTED] said that Mr. Epstein is a “scary person to have walking the streets.” *Id.*

- **Mr. Epstein Poses A Threat to Additional Young Girls If He Is Released**

At the remand/release hearing on Monday, July 15, 2019, as noted, the Court heard poignant testimony from two of Mr. Epstein’s alleged victims about their fears and anxiety over his potential release, even if under strict conditions of home confinement. The Court is also concerned for new victims.

Mr. Epstein’s alleged excessive attraction to sexual conduct with or in the presence of minor girls – which is said to include his soliciting and receiving massages from young girls and young women perhaps as many as four times a day – appears likely to be uncontrollable. *See United States v. Minnici*, 128 F. App’x 827, 829–30 (2d Cir. 2005) (defendant’s alleged sex crimes were “of an addictive sexual nature that cannot be suppressed simply by a restrictive set of bail conditions”). Accordingly, Mr. Epstein’s past sexual conduct is not likely to have abated or been successfully suppressed by fierce determination, as his Defense Counsel suggests. Defense Counsel contends that: “[H]e wasn’t a predator that couldn’t control his conduct. He disciplined himself.” 7/15/19 Tr. at 31-32. Defense Counsel also argues that “appreciating the gravity of these charges . . . putting aside the age of these witnesses and putting the consent issue aside, it’s not like [Epstein is] an out-of-control rapist.” 7/15/19 Tr. at 36. It seems fair to say that

Mr. Epstein's future behavior will be consistent with past behavior, including the trove of "lewd photographs of young-looking women or girls," which were recently uncovered during the July 6-7, 2019, search of Mr. Epstein's East 71st Street mansion. See Dkt. 11, Ex. 1 at 9. The search results suggest the "possibility that defendant could target another vulnerable victim." See United States v. Baker, 349 F. Supp. 3d 1113, 1135 (D.N.M. 2018) (where the defendant was alleged to specifically target "vulnerable women" and where he attempted to contact an alleged victim, the court was persuaded that the defendant "would be a danger to society if released").

Despite having been convicted of the above mentioned (two) Florida sex crimes (in 2008) involving an underage girl, Mr. Epstein, as noted, maintained at his New York residence a "vast trove" of sexually suggestive photographs of nude underage and adult girls. Dkt. 11, Ex. 1 at 9. That is, during the July 6-7, 2019 authorized search of Mr. Epstein's NYC residence, the FBI found a "substantial collection of photographic trophies of his victims and other young females." Dkt. 11 at 10. This evidence includes compact discs labeled "Young [Redacted Name] + [Redacted Name]," "Misc nudes 1," and "Girl pics nude." Id. The Government contends that this evidence includes hundreds or perhaps thousands of "sexually suggestive photographs" of nude underage girls and women, and that it is corroborative in nature. Id. And, it is consistent with victim recollections of the inside of Mr. Epstein's residence. Dkt. 11, Ex. 1 at 9. This newly discovered evidence also suggests that Mr. Epstein poses "ongoing and forward-looking danger." See Dkt. 11 at 10; see also Baker, 349 F. Supp. 3d at 1135; United States v. Goodwin, 2015 WL 6386568, at *3 (W.D. Ky. Oct. 21, 2015).

- **The § 1591 Presumption Of Pretrial Remand Reflects The Seriousness Of Mr. Epstein's Alleged Crimes**

The significant harms and dangers of sex crimes involving minors "animated [] Congress to create the statutory presumption of detention." United States v. Hardy, 2019 WL 2211210, at

*10 (D.D.C. May 22, 2019). The presumption of remand “reflects Congress’s substantive judgment that particular classes of offenders should ordinarily be detained prior to trial.” United States v. Stone, 608 F.3d 939, 945 (6th Cir. 2010). Other serious offenses that are accompanied by the presumption of remand are: Kidnapping (18 U.S.C. § 1201); Aggravated Sexual Abuse (18 U.S.C. § 2241); Sexual Abuse (18 U.S.C. § 2242); Offenses Resulting in Death (18 U.S.C. § 2245); Sexual Exploitation of Children (18 U.S.C. § 2251); Selling or Buying of Children (18 U.S.C. § 2251); Production of Sexually Explicit Depictions of a Minor for importation into the United States (18 U.S.C. § 2260); Coercion and Enticement (18 U.S.C. § 2422); Transport of Minors (18 U.S.C. § 2423); Use of Interstate Facilities to Transmit Information About a Minor (18 U.S.C. § 2425). 18 U.S.C. § 3142(e)(3)(E).

The presumption of remand does not disappear even when rebutted. Martir, 782 F.2d at 1144. If the defendant comes forward with evidence that he will not endanger the community or flee the jurisdiction, the presumption “is not erased.” See United States v. Dominguez, 783 F.2d 702, 707 (7th Cir. 1986). “Rather, the presumption remains in the case as an evidentiary finding militating against release, to be weighted along with other evidence.” United States v. Hir, 517 F.3d 1081, 1086 (9th Cir. 2008); see also Martir, 782 F.2d at 1144 (“The concern underlying the presumption applies to the general class of defendants charged with one of the specified offenses—not merely to defendants who fail to produce rebuttal evidence. Were the presumption . . . to vanish upon *any* showing . . . , courts would be giving too little deference to Congress’ findings regarding this class) (emphasis in original).

- **The U.S. Pretrial Services Department Recommends To The Court That Mr. Epstein Continue to Be Remanded**

The Pretrial Services report, dated July 8, 2019, concludes, following Pretrial Services’ interview of Mr. Epstein, that “[t]here is no condition or combination of conditions that [can]

reasonably assure . . . the safety of the community” if Mr. Epstein is released. Pretrial Services Report, dated July 8, 2019, at 4. Pretrial Services also concluded that Mr. Epstein is a flight risk and recommends that he be detained for that reason as well. Id.

In support of its assessment of Mr. Epstein’s dangerousness, Pretrial Services cites the following: the “Nature of [Mr. Epstein’s currently charged] Instant Offence,” i.e., sex trafficking and conspiracy involving minor girls; Mr. Epstein’s “Prior Arrests,” e.g., in Florida in 2006; Mr. Epstein’s “History [and] Conviction Involving [a] Sex [Offense],” which principally refers to Defendant’s 2008 conviction(s) for procuring a person under the age of 18 for prostitution (a felony) and for solicitation of prostitution (also a felony); Mr. Epstein’s status as a registered sex offender in New York, Florida and the Virgin Islands; and Mr. Epstein’s “Pattern of Similar Criminal Activity History.” Id.

- **The Seriousness Of The Crimes That Mr. Epstein Has Been Charged With Is Also Reflected In The Fact That The Crimes Involve Minor Children**

Mr. Epstein is said by the Government to be “a serial sexual predator” who allegedly victimized dozens (or more) of minor girls, including a 14 year old.¹ He was involved in and undertook the alleged sexual activity in several locations, including, his mansion in Manhattan and his estate in Palm Beach, Florida. Indictment ¶ 2. By “actively encourage[ing] certain of his [minor] victims to recruit additional girls to be similarly sexually abused,” Mr. Epstein is said to have “created a vast network of underage victims for him to exploit.” Dkt. 11, Ex. 1 at 2.

The Government alleges that Mr. Epstein “intentionally sought out—and knew that he was abusing—minors. Indeed, in some instances, his victims expressly told him they were

¹ Mr. Epstein is reported to have remarked that: “I’m not a ‘sexual predator,’ I’m an ‘offender’ . . . It’s the difference between a murderer and a person who steals a bagel.” Amber Southerland, Billionaire Jeffrey Epstein: I’m a sex offender, not a predator, New York Post, Feb. 25, 2011.

underage before or during the period in which he abused them.” *Id.* The crimes with which Mr. Epstein is charged carry a maximum sentence of 45 years of incarceration. *Id.* at 5. “[T]he deprivation of liberty imposed by imprisonment makes that penalty the best indicator of whether the legislature considered an offense to be . . . ‘serious.’” *United States v. Dugan*, 667 F.3d 84, 86 (2d Cir. 2011) (quoting *Lewis v. United States*, 518 U.S. 322, 326 (1996)).

And, the crimes Mr. Epstein has been charged with are among the most heinous in the law principally, in the Court’s view, because they involve minor girls. 18 U.S.C. § 3142 (e)(3)(E); see also Roger Przybylski, *Chapter 5: Adult Sex Offender Recidivism*, Sex Offender Management Assessment and Planning Initiative (“[R]esearchers widely agree that observed recidivism rates are underestimates of the true reoffense rates of sex offenders. Hidden offending presents significant challenges for professionals working in sex offender management as it is difficult to know whether offenders who appear to be nonrecidivists based on official records are truly offense free.”) (emphasis in original).

- **Mr. Epstein Or His Representatives Have Intimidated, Threatened, And/Or Made Payments To Potential Witnesses**

The Government’s evidence includes: (i) Florida police reports describing harassment and intimidation of witnesses involved in the Florida state criminal investigation of Mr. Epstein in 2006, and (ii) emails, dated September 13, 2007 and September 19, 2007 (attached hereto), from Mr. Epstein’s former counsel to Federal prosecutors in Florida discussing the “option” of Mr. Epstein pleading guilty to witness tampering, harassment, and/or obstruction of justice.

A Palm Beach Police Incident Report, dated July 19, 2006, states that one of Mr. Epstein’s victims reported that Mr. Epstein’s representative said to her: **“Those who help [Mr. Epstein] will be compensated and those who hurt [Mr. Epstein] will be dealt with.”** Dkt. 11, Ex. 3 at 2 (emphasis added.) The Report also states: “[Mr. Epstein’s representative] assured [the

victim that] she would receive monetary compensation for her assistance in not cooperating with law enforcement.” Id. Another (undated) Palm Beach Police Incident Report states that the parent of one of Mr. Epstein’s alleged victims contacted the Palm Beach Police to report that Mr. Epstein’s private investigator had aggressively driven the parent’s car off the road. Dkt. 11, Ex. 2 at 1. This same Report states that the parent of another victim reported being “followed aggressively” by Mr. Epstein’s private investigator. Id.

The Government contends that these reports together “suggest that an associate of Epstein’s was offering to buy victims’ silence during the course of the prior investigation,” and demonstrate Mr. Epstein’s “willingness to use intimidation and aggressive tactics in connection with a criminal investigation.” Dkt. 11 at 11.

The Government also submits e-mail evidence (attached to this Order as Exhibit 1) of plea discussions in 2007 between Florida federal prosecutors and Mr. Epstein’s attorneys that confirm that Mr. Epstein considered pleading guilty to witness tampering, harassment and/or obstruction of justice in a case involving alleged sex crimes with minor girls. On September 13, 2007, prosecutors wrote to Mr. Epstein’s counsel that they have been “spending some quality time . . . looking for misdemeanors [that Mr. Epstein could plead guilty to],” including 18 U.S.C. § 1512(d), a Federal witness tampering statute (a felony) and 18 U.S.C. § 403, a Federal statute criminalizing the violation of the privacy protection of child victims and child witnesses (a misdemeanor). Doe v. United States, 08 Civ. 80756, (S.D. Fla.), Dkt. 361-11. Epstein’s counsel replied: “Already thinking about the same statutes.” Id. On September 18, 2007, a Federal prosecutor told Mr. Epstein’s counsel that if Mr. Epstein pled guilty to obstruction of justice, the factual proffer “could rely on the incident where Mr. Epstein’s private investigators followed [a victim’s] father, forcing [him] off the road.” Id., Dkt. 361-10; see also supra p. 15. On September

19, 2007, Mr. Epstein's counsel proposed that Mr. Epstein admit that he verbally harassed victims or the family of victims in connection with his "attempt to delay their voluntary receipt of process" in a civil action against Mr. Epstein, in violation of a Federal witness tampering statute. Doe, Dkt. 361-9.

And, the Government has recently contended that, on November 28, 2018 and on December 3, 2018 – very soon after the publication of a 3-part investigative report in the Miami Herald (authored by Julie K. Brown) relating to Mr. Epstein's Florida Non-Prosecution Agreement, dated September 24, 2007 – Mr. Epstein paid \$100,000 to "a company founded and run by [Individual I]," and he paid \$250,000 to [Individual II]. Dkt. 23 at 1. The Government states that Individual I was "a potential co-conspirator—[] for whom Epstein obtained protection in [] the NPA." Id. Individual I was named and featured prominently in the Miami Herald. See, e.g., Julie K. Brown, "Even From Jail, Sex Abuser Manipulated The System. His Victims Were Kept in The Dark," Miami Herald, Nov. 28, 2018.

The Government states that Individual II was also "a potential co-conspirator—[] for whom Epstein also obtained protection in [] the NPA." Dkt. 23 at 2. She is "one of the employees identified in the Indictment, which alleges that she and two other identified employees facilitated the defendant's trafficking of minors by, among other things, contacting victims and scheduling their sexual encounters with the defendant at his residences in Manhattan and Palm Beach, Florida." Id. at 2. Individual II was also named and featured prominently in the Miami Herald report.

The Government states there is good reason to infer that Mr. Epstein was attempting to "influence [these two] individuals who were close to him during the time period charged in this case and who might be witnesses against him at a trial." Dkt. 11 at 11. "Neither of these

payments appears to be recurring or repeating during the approximately five years of bank records presently available to the Government. This course of action, and in particular its timing, suggests the defendant was attempting to further influence co-conspirators who might provide information against him in light of the recently re-emerging allegations.” Id.

A court may order detention if there is a serious risk that the defendant will attempt to threaten, injure, or intimidate a prospective witness or juror. 18 U.S.C. § 3142(f)(2)(B). Even a single incident of witness tampering has been a “traditional ground for pretrial detention by the courts.” LaFontaine, 210 F.3d at 132-34 (affirming then-U.S. District Judge Michael B. Mukasey’s denial of bail to a defendant who had met with a prospective witness in an effort to persuade the witness to give untruthful testimony and where there was “no evidence of influence, harassment or intimidation”); see also United States v. Singh, 2012 WL 3260232, at *3 (E.D.N.Y. Aug. 8, 2012).

- **Mr. Epstein Has Not Always Been Compliant With His Legal Obligations As A Registered Sex Offender**

Defense counsel has contended that Mr. Epstein has been “scrupulously fulfill[ing] his obligations in every jurisdiction in which he was required to register [as a sex offender],” since his 2008 Florida convictions. Counsel argues that this shows that he “is no longer a danger to anyone and will faithfully obey all conditions of release if ordered.” Dkt. 6 at 3.

The record shows that Mr. Epstein has challenged his sex offender “level” in at least one jurisdiction since 2008 in an effort to minimize his reporting obligations. And, one recent press account states that Epstein is not in compliance in New York State. See Elizabeth Rosner, Tina Moore, Larry Celona, and Bruce Golding, NYPD let convicted pedophile Jeffrey Epstein skip judge-ordered check-in, New York Post, July 10, 2019 (“July 10, 2019 NY Post Article”)

(“Jeffrey Epstein never once checked in with City cops in eight-plus years since a Manhattan judge ordered him to do so every 90 days”).

Mr. Epstein is a Level III sex offender in New York State which is the highest category of risk to reoffend. This designation requires that Mr. Epstein report his presence in New York to law enforcement authorities every 90 days. As discussed at the July 15, 2019 bail hearing, counsel for Mr. Epstein made an application in New York State Supreme Court in 2011 to reduce Epstein’s sex offender registration status from Level III to Level I. If granted, this reduction would have allowed Mr. Epstein to avoid his reporting obligations. In a Sex Offender Registration Act Hearing on January 11, 2018, held before the Honorable Ruth Pickholz, Mr. Epstein’s application was (firmly) denied, principally because it had been established by the Board of Examiners of Sex Offenders. See People v. Epstein, Indict. # 30129/2010, (N.Y. Sup. Ct.), SORA Hearing Transcript, dated Jan. 18, 2011.

At the hearing, New York County Assistant District Attorney Jennifer Gaffney joined in Defense Counsel’s appeal to review and overturn the decision of the Board of Examiners of Sex Offenders and achieve a downward modification of Mr. Epstein’s sex offender status. Id. at 2-15. Judge Pickholz appeared to be stunned by the joint Defense Counsel/District Attorney application, stating: “I am just a little overwhelmed that the People are making this application. . . . I have done many SORAs much less troubling than this one where the People would never make a downward [adjustment] argument like this. . . . I have never seen the prosecutor’s office do this. I have to tell you, I am shocked.” Id. at 4-5. Judge Pickholz also ordered Mr. Epstein to report as a Level III sex offender every 90 days in New York. Id. at 12. “I am sorry [Mr. Epstein] may have to come here every 90 days. He can give up his New York home [on East 71st. St.] if he does not want to come every 90 days.” Id. Epstein appealed but Judge Pickholz’s decision

was unanimously affirmed, on November 17, 2011, by a panel of five judges of the Appellate Division of the New York State Supreme Court. People v. Epstein, 89 A.D.3d 570, 933 N.Y.S.2d 239 (N.Y. App. Div. 2011).

Notwithstanding Judge Pickholz's order, according to a July 10, 2019 investigative report by the New York Post, as noted, Mr. Epstein has never reported as a sex offender to New York law enforcement. See July 10, 2019 NY Post Article. "The NYPD cop assigned to monitor Epstein has repeatedly complained to [the New York County District Attorney's] Sex Crimes Unit that Epstein wasn't in compliance, according to a source familiar with the matter." Id. Mr. Epstein's alleged failure to comply with his New York sex offender obligations would appear to undermine defense counsel's premise that Mr. Epstein's "perfect compliance" and "meticulous obedience," Dkt. 6 at 1, 5, to his sex offender registration obligations should lead to his release. See LaFontaine, 210 F.3d at 135 n.6 (where the Court ordered detention noting that the defendant "had previously disregarded court orders").

The Court has also read the story in the July 17, 2019, New York Post in which attorney Brad Edwards contends that while Epstein was serving his Florida state sentence (after pleading guilty to procuring a minor under 18 for prostitution and solicitation of prostitution), Epstein was allowed to leave the jail on work release. While on work release "[h]e was having . . . female visitors . . . and continuing to engage in . . . [sexual] conduct . . . while he was in 'jail'." Mr. Edwards is counsel to one of Mr. Epstein's victims. See Reuven Fenton and Kate Sheehy, Jeffrey Epstein had sex den while serving time: lawyer, New York Post, July 16, 2019. The Court is also aware of an article published by Palm Beach CBS local news which reports that the Palm Beach County Sheriff's Office "disputes [the] claim that Jeffrey Epstein had sex on work release." A spokeswoman for the sheriff's office is quoted as saying "If he violated any conditions of his

release he would have been brought back to the Stockade and work release would have been terminated.” Chuck Weber, PBSO disputes claim that Jeffrey Epstein had sex on work release, CBS 12 News, July 17, 2019.

- **New Mexico, Florida And The Virgin Islands**

With respect to Mr. Epstein’s sex offender status in New Mexico, Defense Counsel has submitted a letter, dated August 19, 2010, from Regina Chacon, Assistant Bureau Chief, Law Enforcement Record Bureau of the New Mexico Department of Public Safety, which states that Mr. Epstein “is not required to register [as a sex offender] with the State of New Mexico at this time for [his] 2008 Florida conviction of Procuring [a] Person Under 18 for Prostitution.” Dkt. 25, Ex. A. The Court requested from the Defense all application materials that Mr. Epstein may have submitted to the New Mexico Department of Public Safety, believing that the Department would not initiate the waiver of Mr. Epstein’s sex offense registration on its own. No such materials have been received by the Court as of this date.

The Court understands that Mr. Epstein is also registered as a sex offender in the Virgin Islands (Level I) and in Florida (Level I). It has received no materials from the Defense regarding sex offender applications or proceedings in those two jurisdictions.

In sum, based upon all of the proffers and evidence set forth at pp. 10-21 above, the Court finds by clear and convincing evidence that Mr. Epstein poses a danger to other persons and to the community.

G. Mr. Epstein Also Poses A Risk Of Flight

In the section that follows, the Court considers “risk of flight” even though it has already determined that Mr. Epstein presents a danger to the community. “[A] finding of either danger to the community or risk of flight will be sufficient to detain the defendant pending trial.”

United States v. King, 849 F.2d 485, 488 (11th Cir. 1988) (quoting United States v. Portes, 786 F.2d 765 (7th Cir. 1985)). The Court finds that the Government has shown by a preponderance of the evidence that Mr. Epstein is a flight risk.

The factors to be considered in analyzing risk of flight are the same factors that apply when analyzing dangerousness. They are: (1) the nature and circumstances of the crimes charged; (2) the weight of the evidence against the defendant; (3) the history and characteristics of the defendant, including the person's character and financial resources; and (4) "the seriousness of the danger posed by the defendant's release." 18 U.S.C. § 3142(g). "The weight afforded to each factor under section 3142(g) is within the 'special province' of the district court." Paulino, 335 F. Supp. at 610.

At the outset, it should be noted that the Pretrial Services Report, dated July 12, 2019, concludes that: "The defendant poses a risk of nonappearance for the following reasons:

1. [Mr. Epstein's] Extensive foreign travel and possession of travel documents
2. [Mr. Epstein's] Residential and Financial Ties outside this District and Country
3. [Mr. Epstein's] Employment ties outside this country
4. [Mr. Epstein's] Unexplained assets
5. [Mr. Epstein's] Criminal History including [his] conviction for a [] sex offense [with minors in Florida in 2008]." Pretrial Services Report, dated July 12, 2019 at 4.

- **The Crimes Charged Against Mr. Epstein**

Mr. Epstein has been charged with among the most serious crimes recognized by U.S. Federal law. The Government has alleged that Mr. Epstein intentionally sought out and sexually abused minor girls, including those "particularly vulnerable to exploitation." Dkt. 11, Ex. 1, at 2. He did this in multiple locations, including New York and Palm Beach. Id. And, Mr. Epstein allegedly "worked and conspired with others, including employees and associates who facilitated

his [unlawful] conduct, by . . . contacting victims and scheduling their sexual encounters.”

Indictment ¶ 4. These crimes, as already noted, carry a maximum sentence of 45 years of incarceration and give rise to a presumption of pre-trial remand. 18 U.S.C. § 3142 (e)(3)(E); see United States v. Hardy, 2019 WL 2211210, at *10 (D.D.C. May 22, 2019) (“The significant harms and dangers of these crimes animated the Congress to create the statutory presumption of detention.”). The nature and circumstances of the crimes charged and the severity of the potential punishment support a finding that Defendant poses “a serious flight risk and that no conditions can be set to reasonably assure his appearance for trial.” United States v. Cilins, 2013 WL 3802012, at *2 (S.D.N.Y. July 19, 2013).

- **Weight Of The Evidence**

The Government’s evidence against Mr. Epstein appears strong. The evidence includes testimony of victims, some of whom were minor girls when they were allegedly sexually abused by Mr. Epstein; other witnesses, including potential coconspirators; physical evidence, including passports reflecting extensive foreign travel; sexually suggestive photographs of nude underage girls; plea discussions; and police reports describing witness tampering and intimidation. See, e.g., United States v. Fama, 2013 WL 2467985, at *3 (S.D.N.Y. June 7, 2013) (“the Court recognizes the difficulty inherent in assessing the Government’s case before trial, and is mindful not to reach any conclusions about [the Defendant’s] guilt or innocence. Indeed, some courts have described the weight of the evidence factor as the ‘least important’ of the § 3142(g) factors for these reasons.”); see also Hir, 517 F.3d at 1090.

- **History And Characteristics Of The Defendant Including His Financial Resources**

Mr. Epstein pled guilty to two state felonies involving minor girls in Florida. He also held plea discussions regarding witness tampering in Florida in 2008. He is a registered Level III

sex offender in New York and a registered sex offender in Florida (Level I) and the Virgin Islands (Level I). Mr. Epstein is 66 and is reported to be a self made multi-millionaire. He did not graduate from college. Mr. Epstein's vast wealth, including substantial liquid assets, multiple residences, private plane(s), a \$8,672,823 residence in Paris, France, and relatively limited family ties to the United States in the sense that he is single with no children and his parents are deceased. He has a brother who Defense counsel asserts has offered to serve as a guarantor for Mr. Epstein by pledging his home in West Palm Beach, Florida. (The Court notes that the Pretrial Services Report, dated July 12, 2019, states that "[t]he defendant stated he maintains minimal contact with his brother, Mark Epstein, and that his exact location is unknown at this time." Pretrial Services Report at 2.)

Mr. Epstein engages in extensive overseas travel often relying on his own plane(s). The Government argues persuasively that "there is an extraordinary risk of flight, particularly given the defendant's exorbitant wealth, his ownership of and access to private planes capable of international travel, and his significant international ties. Indeed, the arrest of the defendant occurred when he arrived in the United States on his private jet after having returned from a multi-week stay abroad." Dkt. 11, Ex. 1 at 1. "[I]n the past 18 months alone, the defendant has traveled abroad, via private jet, either into or out of the country on approximately more than 20 occasions." Id. at 3.

In a recent search of Defendant's New York City home, law enforcement seized an expired Austrian passport bearing Mr. Epstein's photo but not his name. (The passport is in another name.) The Austrian passport lists residence in Saudi Arabia. According to the Government, Defense counsel declined to respond when asked by the Government if the

“Defendant is currently, or has been in the past, a citizen or legal permanent resident of a country other than the United States.” Dkt. 23 at 2.

Defense counsel contends that Defendant has one active passport that was surrendered and that “Mr. Epstein has no foreign passports.” Dkt. 6 at 3 n. 3. With regard to the Austrian passport, the Defense explains that “Epstein . . . acquired the passport in the 1980s, when hijackings were prevalent, in connection to Middle East travel. The passport was for personal protection in the event of travel to dangerous areas, only to be presented to potential kidnapers, hijackers or terrorists should violent episodes occur.” Dkt. 24 at 8. Details about how the passport was procured by Mr. Epstein in the name of another individual were not provided and are not known to the Government. See Dkt. 23 at 2 (“The Government is attempting to obtain additional information about the Foreign Passport, including how it was obtained and whether the passport is genuine or fabricated. But the defendant’s possession of what purports to be a foreign passport issued under an alias gives rise to the inference the defendant knows how to obtain false travel documents and/or assume other, foreign identities. This adds to the serious risk of flight posed by the defendant.”). The Government also argues that “the passport contains numerous ingress and egress stamps, including stamps that reflect use of the passport to enter France, Spain, the United Kingdom, and Saudi Arabia in the 1980s.” Dkt. 30. By submission dated July 18, 2019, the Defense explains: “Epstein was given the passport at issue by a friend . . . He never used the document to travel internationally and never presented it to any immigration or customs authority. The passport stamps, predating his receipt of the document, do not reflect Mr. Epstein’s entries or exits.” Dkt. 31.

Defense counsel has submitted a one page document called “Asset Summary - June 30, 2019.” It indicates that Epstein has cash in the amount of \$56,547,773; fixed income valued at

\$14,304,679; equities valued at \$112,679,138; hedge funds and private equity valued at \$194,986,301; properties located at 9 East 71st Street, NY, NY 10021 valued at \$55,931,000, [REDACTED] valued at \$17,246,208, 358 El Brillo Way, Palm Beach, Florida 33480 valued at \$12,380,209, [REDACTED] valued at \$8,672,823, [REDACTED] (parcels A, B, and C) valued at \$22,498,600 and [REDACTED] (parcels A, B, and C). Dkt. 14 at 18. The Court has advised Defense counsel that this “cursory” asset statement is insufficient to support a bail package for the reasons, among others, that it is not verified and does not show expenses, indebtedness, or liabilities.

Law enforcement has informed the Government that a safe in the Defendant’s New York home very recently contained “more than \$70,000 in cash . . . 48 loose diamond stones, ranging in size from approximately 1 carat to 2.38 carats, as well as a large diamond ring. The Government is currently unaware of whether the Defendant maintains similar [amounts] of cash and/or jewels at his multiple properties, or in other locations. Such ready cash and loose diamonds are consistent with the capability to leave the jurisdiction at a moment’s notice.” Dkt. 23 at 3.

The Defendant’s vast wealth and influential contacts have provided him with the means to pay individuals to assist him in unlawful endeavors, including potentially fleeing the jurisdiction. In the past, “the Defendant worked with others, including employees and associates who facilitated his exploitation of minors, by among other things, contacting victims and scheduling their sexual encounters with the defendant, both in New York and in Florida.” Dkt. 11, Ex. 1 at 2.

David Boies, who, as noted, represents identified victims in this case, advised the Court that while a civil case was proceeding against the Defendant “we had situations in which we had witnesses who were cooperating with us and then were contacted by either Mr. Epstein or his lawyers and who then stopped cooperating with us.” 7/15/19 Tr. at 71; see also United States v. Boustani, 356 F.Supp.3d 246 (E.D.N.Y. 2019) (“[T]he combination of Defendant’s alleged deceptive actions, access to substantial financial resources, frequent international travel, complete lack of ties to the United States, and extensive ties to foreign countries without extradition demonstrates Defendant poses a serious risk of flight.”); United States v. Epstein, 155 F.Supp.2d 323, 326 (E.D. Penn. 2001) (“The crucial factor, however, is defendant’s lack of ties to the United States and his extensive ties to Brazil with which no extradition treaty exists. In our view, his forfeiture of \$1million worth of assets in the United States would not deter him from flight when in Brazil he has significant wealth, a lucrative job, the presence of his family, and insulation from ever being forced to stand trial.”).

Viewing the totality of the circumstances, the Court finds that the Government has shown by a preponderance of the evidence that Defendant is a serious risk of flight and that no conditions can be set that will reasonably assure his appearance at trial. “While other judges in this district have found that an armed security guard may be sufficient to assure a defendant’s appearance, even when he is a serious risk of flight . . . this Court does not believe that that condition, even coupled with the additional conditions proposed, would be sufficient.” United Cilins, 2013 WL 3802012, at *3.

- **The Danger Posed By The Defendant’s Release**

As demonstrated infra, Mr. Epstein’s dangerousness is considerable and includes sex crimes with minor girls and tampering with potential witnesses. The discussion at pp 10-21 is

incorporated here by reference. See Minnici, 128 F. App'x at 829–30 (“the alleged activities [we]re of an addictive sexual nature that cannot be suppressed simply by a restrictive set of bail conditions”); see also Millan, 4 F.3d at 1049 (“[T]he protection of the community can be assured only by continued detention.”).

The Court has carefully considered the issue of Defendant's ability and motivation for fleeing U.S. jurisdiction. The Court finds that the Government has proven by a preponderance of the evidence that, among other things, the Defendant's limited family ties to the United States, his residence in Paris, his extensive overseas travel, his significant wealth and his substantial resources (including private planes), and the potential 45 year term of imprisonment that may be imposed should there be a conviction in this case, provide incentive, motive and wherewithal to flee. Indeed, these factors render him a “classic” flight risk. See, e.g., United States v. Abdullahu, 488 F.Supp.2d 433, 445 (D.N.J. 2007) (“After reviewing the totality of the evidence, the Court has reached the inescapable conclusion that the government has proved by a preponderance of the evidence that no condition or combination of conditions exist that will reasonably assure the defendant's appearance at trial. The defendant faces serious criminal charges . . . The defendant faces a potential ten year prison sentence and involuntary deportation. The defendant does not have permanent and longstanding ties to this area, he has the means and incentive to flee and he has family ties and a place to live in an overseas country that will not extradite him to the United States.”).

H. Defendant's Proposed Bail Package

Having determined that Mr. Epstein is a flight risk (and also a danger to the community), the Court next examines the Defendant's proposed bail package. See 18 U.S.C. § 3142(b)-(f)(2).

The Court finds that the Defendant's proposed bail package is inadequate. Among its deficiencies are these:

(1) The bail package is not accompanied or supported by audited or certified financial statements, including details of income and expenses and debt obligations. There is no affidavit from Mr. Epstein. As noted, Defense counsel submitted a cursory one page "Asset Summary - June 30, 2019" on Mr. Epstein's behalf in which he discloses several categories of assets totaling \$559,120,954. The Defense states that it "would be impossible for Epstein – given, among other impediments, his detention, inability to quickly access pertinent records, and inability to quickly make a precise valuation of particular assets – to provide a sufficient financial statement by the Court's 5 pm deadline." Dkt. 23 at 4.

The absence of accurate and comprehensive financials, sworn to by the Defendant, does not allow the Court meaningfully to assess Defendants' own proposed bail package nor would it enable the Court to fashion a bail package on its own. The Court would not be able to determine what level of bail – in relation to Epstein's finances – would reasonably assure the Defendant's appearance. Defense counsel proposed at the bail hearing on July 15, 2019 that it would take a few days to prepare accurate financials for Mr. Epstein. He also suggested that he would do so (only) if the Court were agreeable to granting bail. This "offer" appears disingenuous for a person as wealthy and experienced in financial matters as Mr. Epstein. See Tr. 7/15/19 at 50 (Court: "There needs to be a fuller financial picture to know what would be appropriate." Defense Counsel: "Let me be blunt. It was our first effort . . ."). That Mr. Epstein does not have a financial statement, including liabilities and expenses, readily available is difficult to understand.

(2) The defense bail package proposes excessive involvement of the Court in routine aspects of Mr. Epstein's proposed home confinement. This is not the Court's function. See United States v. Zarrab, 2016 WL 3681423, at *10 (S.D.N.Y. June 16, 2016) ("The [bail package] . . . proposed by the defense is not reasonable because, in too many respects, it substitutes judicial oversight and management for (more appropriate) reliance upon trained, experienced, and qualified professionals from the U.S. Bureau of Prisons and the U.S. Marshals Service."). The Defense package components would embroil the Court in issues, among others, relating to the level of force that may be used to secure the Defendant, who may enter the residence, daily reporting by Mr. Epstein, and reporting by so-called Trustee(s) designated to live with and supervise Mr. Epstein. See United States v. Valerio, 9 F. Supp. 3d 283, 295 (E.D.N.Y. 2014) ("The questions about the legal authorization for the private security firm to use force against defendant should he violate the terms of his release, and the questions over whether the guards can or should be armed, underscore the legal and practical uncertainties - indeed, the imperfections - of the private jail-like concept envisioned by defendant, as compared to the more secure option of an actual jail.").

(3) The Defense proposal to give advance consent to extradition and waiver of extradition rights is, in the Court's view, an empty gesture. And, it comes into play only after Mr. Epstein has fled the Court's jurisdiction. According to the Government, "The Department of Justice's Office of International Affairs is unaware of any country anywhere in the world that would consider an anticipatory extradition waiver binding. And, of course, the defendant could choose to flee to a jurisdiction with which the United States does not have an extradition treaty." Dkt. 11 at 7.

(4) Although the Defense has stated that Mr. Epstein would be agreeable to putting up "any amount" of collateral or signing "any bond" the Court would require, there has, to date,

been no concrete pledge of any real assets or any concrete proposal to turnover deeds to real property, or to provide a specific amount of cash. See 7/15/19 Tr. at 50 (“I am authorized to say to the Court that whatever bond you want Mr. Epstein to sign, whether it’s \$100 million or an amount close to the amount of the assets that we have provided, Mr. Epstein is prepared to sign it.”).

The Court, as noted, has no detailed information regarding the extent of the Defendant’s assets, including the nature, value and location of all of his assets. There is no mention of any expenses, liabilities, or indebtedness. And, there has been no persuasive Defense counter to the Government’s argument that “even were the defendant to sacrifice literally all of his current assets, there is every indication that he would immediately be able to resume making millions or tens of millions of dollars per year outside of the United States. He already earns at least \$10,000,000 per year, according to records from Institution-1, while living in the U.S. Virgin Islands, traveling extensively abroad, and residing in part in Paris, France; there would be little to stop the defendant from fleeing, transferring his unknown assets abroad, and then continuing to do whatever it is he does to earn his vast wealth from a computer terminal beyond the reach of extradition.” Dkt. 11 at 5 (emphasis omitted). The Defendant, it should also be noted, is already at risk of losing some of his real property because the Indictment contains a forfeiture allegation regarding any property that was used or intended to be used to commit or to facilitate the sex trafficking offenses and that includes, but it is not limited to, the property located at 9 East 71st Street, New York, New York.

(5) The appointment and role of “trustees” who will presumably live with Mr. Epstein and monitor his compliance with bail conditions are unacceptably vague. They do not, for example, address the conflict that is created by the salary the “trustees” are earning from the

Defendant and their purported role as independent monitors. (The same problem arises in relation to private 24/7 security guards.) This is especially problematic where, as here, it is alleged that employees of the Defendant may have engaged in unlawful acts with and on behalf of the Defendant. According to the Government, “the defendant worked with others, including employees and associates who facilitated his exploitation of minors, by among other things, contacting victims and scheduling their sexual encounters with the defendant, both in New York and in Florida.” Dkt. 11, Ex. 1 at 2.

(6) “As a fallback,” the Defense suggests the utilization of and the funding of a private security guard agency to “virtually guarantee” Mr. Epstein’s presence in court and, presumably, also to supervise his behavior. This contingency plan is not a part of Mr. Epstein’s 14 point proposal. Nevertheless, the Court is asked by the defense to “revisit” its legal viewpoint as expressed in an earlier decision concerning 24/7 private home security guards.

Each bail package in each case is considered and evaluated on its individual merits by the Court. And, in view of the Court’s finding of dangerousness, a new bail proposal likely would be futile. See, e.g., United Ferranti, 66 F.3d at 544 (“No conceivable conditions could ensure the safety of the community.”); Orena, 986 F.2d at 632 (“We do not agree that the bail conditions set by the district court eliminate the danger to the community or are superior to detention for purposes of the Bail Reform Act.”); United States v. Colombo, 777 F.2d 96, 100 (2d Cir. 1985) (“These conditions are clearly inadequate to protect the public from one found for bail purposes to be a danger to the community.”).

Conclusion & Order

Based upon the forgoing, the Government's motion for remand (detention) is granted and the Defense motion for pretrial release is denied.

Dated: New York, New York
July 18, 2019

A handwritten signature in black ink, appearing to read 'RMB', is positioned above a horizontal line.

RICHARD M. BERMAN, U.S.D.J.



U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

March 10, 2020

BY EMAIL

Jason E. Foy
Foy & Sepowitz LLC

Montell Figgins, Esq.
Law Offices of Montell Figgins

Re: *United States v. Tova Noel and Michael Thomas*, No. 19 Cr. 830

Dear Counsel:

We write in response to your discovery request letters, dated January 29, 2020. This letter is designated as Protected Material pursuant to the Protective Order entered in this matter.

Thomas Request. The Government refers to its prior response to this request, as stated at the November 25, 2019 pretrial conference.

Noel Request No. 1-10, 12-13. With respect to your other requests, we note, at the outset, that many of these requests are extremely broad and pertain to information that does not appear to be relevant to the case. To the extent material called for by these requests is within the Government's possession and subject to disclosure at this time, the Government has already disclosed such information to you, including by letter dated January 24, 2020. To the extent these requests call for information that is not currently in the Government's possession or which is not subject to disclosure, you identify no legal basis or authority for these requests, and we are not aware of any authority requiring us to obtain and/or disclose this information.

Noel Request No. 11. The name of the MCC technician referenced in the Government's previous letter is **XX**.

Noel Request No. 16. The Government has already produced the available video surveillance in its possession for July 23, 2019 for the Special Housing Unit. The Government attaches hereto two public filings in *United States v. Tartaglione*, 16 Cr. 832 (KMK), which reference these issues.

06.20.2018

EFTA00039416

Noel Requests No. 14-5, 17-23. These requests, in general terms, call for information about where particular evidence may be located within the discovery produced to date. As you note, you seek this information to “assist in expediting the ability of the defense to be ready for trial.” Accordingly, with respect to Noel Requests No. 14-15, 17-23, at your request and solely as a courtesy to aid you in your review of discovery, the Government is providing the information that follows. The Government’s response to your requests should not be used for any other purpose, nor should it be construed as a representation that only these files or portions of the surveillance video are potentially relevant to the Government’s case or any potential defense, or as a representation that the identified portions are the only portions of surveillance video that would be responsive to your requests. The Government expressly reserves the right to identify and/or offer at trial additional material as probative of any of the issues identified in these requests.

Noel Request No. 14. With respect to August 9, 2019, we direct your attention to the following video files: CH0080_20190809195956; CH0080_20190809205956, CH0080_20190809215956; CH0080_20190809225956. With respect to August 10, 2019, the following video files contain this activity: CH0080_20190809235959; CH0080_20190810005959; CH0080_20190810025959; CH0080_20190810035959; CH0080_20190810045959; and CH0080_20190810055959.

Noel Request No. 15. While the Government has not conducted a review of every time Jeffrey Epstein was captured on MCC surveillance during the more than 30 days he was housed there prior to his death and does not purport to provide such an exhaustive response, as a courtesy and to aid in your review of the discovery, we direct your attention to the following: on August 9, 2019 Epstein was captured leaving his cell to make a phone call at approximately 18:53:54 – 18:54:46 (CH0080_20190809175956). Epstein was escorted back to his cell at approximately 19:49:25 – 19:49:39 (CH0080_20190809185956).

Noel Request No. 17. We direct your attention to files CH0080_20190809145956 and CH0080_20190809155956, during approximately 15:45:00 – 16:15:00 on August 9, 2019.

Noel Request No. 18. We direct your attention to files CH0080_20190809205956 and CH0080_20190809215956, during approximately 19:45:00 – 20:15:00 on August 9, 2019.

Noel Request No. 19. We direct your attention to file CH0080_20190809215956, during approximately 22:29:00 – 22:34:00.

Noel Request No. 20. We direct your attention to files CH0080_20190809225956 CH0080_20190809235959, during approximately 23:45:00 (August 9) – 00:15:00 (August 10).

Noel Request No. 21. The Government does not presently believe this interaction was captured by surveillance video.

Noel Request No. 22. The Government refers you to the forensic examination of the computers used by defendants Noel and Thomas during August 9 to 10, 2019, which were previously produced in discovery (SDNY_00000021 – SDNY_00000075). The Government also refers you to the following files during the following times, which show the defendants at the desk

during the periods of time in which they were using computers, as shown by the forensic examination referenced above: files CH0080_20190809225956, CH0080_20190809235959, CH0080_20190810005959, CH0080_20190810025959, CH0080_20190810035959, CH0080_20190810045959, and CH0080_20190810055959, during approximately (8/9) 23:39:00 – (8/10) 00:15:00, (8/10) 03:54:00 – 03:57:00, (8/10) 04:29:00 – 05:04:00, and (8/10) 05:10:00 – 06:20:00 as to defendant Noel, and approximately (8/10) 00:35:00 – 01:15:00 and (8/10) 06:00:00 – 06:20:00 as to defendant Thomas.

Noel Request No. 23. The Government refers you to files CH0080_20190810005959, CH0080_20190810015959, and CH0080_20190810025959 during approximately 00:01:00 – 03:15:00 on August 10, 2019.

We are available at your convenience to discuss any further.

Very truly yours,

GEOFFREY S. BERMAN
United States Attorney for the
Southern District of New York

By: _____ /s/

Assistant United States Attorneys

From: "[REDACTED]"

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Subject: RE: Maxwell lead?

Date: Wed, 14 Apr 2021 16:01:41 +0000

H [REDACTED]

Thanks very much for letting us know. We will pass this on to the FBI.

[REDACTED]

From: [REDACTED] >

Sent: Wednesday, April 14, 2021 11:58 AM

To: [REDACTED]
[REDACTED]

Subject: Maxwell lead?

Hi and hope all is well.

My brother is a Lieutenant in the NYPD. One of his former [REDACTED], works in private security for [REDACTED], who have homes here and in Florida and the Bahamas. They claim to have information and documents to share regarding Jeffrey Epstein and Ghislaine Maxwell (about what, I do not know). If you wish to put an agent in touch with them, here is [REDACTED] contact info: mobile # [REDACTED] or email [REDACTED] He can provide or gather whatever information you need to follow up as you wish.

Best,

[REDACTED]

[REDACTED]
Assistant United States Attorney
United States Attorney's Office
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[REDACTED]
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Subject: FW: U.S. v. Maxwell, Case No. 20 Cr. 330 (AJN) [Resp to Govs April 5, 2021 re. Ms. Maxwell's Rule 17 Subpoena]

Date: Thu, 15 Apr 2021 21:29:06 +0000

Attachments: 2021.04.15_JSP_Ltr_Resp_re._Govs_Ltr._Motn_re._Notice_of_Defts_Rule_17_Subsub.pdf

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From: Nicole Simmons <[REDACTED]>
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Subject: U.S. v. Maxwell, Case No. 20 Cr. 330 (AJN) [Resp to Govs April 5, 2021 re. Ms. Maxwell's Rule 17 Subpoena]

Dear Judge Nathan,

Consistent with prior practice in this matter involving information that may be covered by the Protective Order, and in abundance of caution, we submit Ms. Maxwell's Response to the government's April 5, 2021 Notice of Defendant's Rule 17 Subpoenas directly to the Court with service on the government. We will confer with the government regarding any proposed redactions and file the Response on the public docket as directed by the Court.

Respectfully Submitted,

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA :

-v.- : S1 20 Cr. 330 (AJN)

GHISLAINE MAXWELL, :

Defendant. :

-----X

THE GOVERNMENT'S OMNIBUS MEMORANDUM IN OPPOSITION
TO THE DEFENDANT'S PRE-TRIAL MOTIONS

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- Exhibit 2: June 14, 2007 Email
- Exhibit 3: November 2020 Report, U.S. Department of Justice, Office of Professional Responsibility
- Exhibit 4: Notes from February 11, 2021 Call
- Exhibit 5: Notes from February 29, 2016 Meeting
- Exhibit 6: November 30, 2018 Email
- Exhibit 7: December 6, 2018 Email
- Exhibit 8: February 28, 2019 Government Letter to Judge Sweet
- Exhibit 9: February 28, 2019 Government Letter to Judge Netburn
- Exhibit 10: Transcript of April 22, 2016 Deposition
- Exhibit 11: Transcript of July 22, 2016 Deposition
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA	:	
-v.-	:	S1 20 Cr. 330 (AJN)
GHISLAINE MAXWELL,	:	
Defendant.	:	

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PRELIMINARY STATEMENT

The Government respectfully submits this memorandum in opposition to the defendant’s twelve pre-trial motions, dated January 25, 2021 (the “Defense Motions”). In her pretrial motions, the defendant seeks to throw everything but the proverbial kitchen sink at the Indictment, raising myriad arguments that find little support in fact or law. For the reasons that follow, the motions should be denied in their entirety.

First, the non-prosecution agreement between Jeffrey Epstein and the U.S. Attorney’s Office for the Southern District of Florida is entirely irrelevant to this case, and the defendant’s motion fails as a matter of law. *Second*, the indictment is timely under 18 U.S.C. § 3283, which provides an extended statute of limitations for crimes involving the sexual abuse of minors. The defendant’s statute of limitations arguments run contrary to the text of the statute, the intent of Congress, and the weight of authority. *Third*, the defendant’s claim that the Government delayed in bringing the indictment fails as a matter of law and fact. *Fourth*, both of the defendant’s motions to suppress evidence obtained through a judicially approved subpoena are meritless, and her allegations of Government misconduct are baseless. *Fifth*, Counts Five and Six—which charge the defendant with committing perjury—are properly pleaded, and the defendant’s motion to

dismiss those charges improperly asks the Court to adjudicate her guilt. It is for the jury to decide whether the defendant committed perjury, and the motion should be denied. *Sixth*, the crimes in the indictment should be tried together, as all six counts of the indictment are logically connected and provable through overlapping evidence. The Court should not sever this case, and thereby require victims of child sexual abuse to testify at multiple trials. *Seventh*, the Indictment indisputably alleges each element of every offense charged and provides the defendant with ample notice of the charges against her. *Eighth*, the Indictment is properly pled and there is no basis to strike any portion of it as surplusage. *Ninth*, the defense motion to dismiss one of the conspiracy charges as multiplicitous is premature. *Tenth*, the defendant is not entitled to a bill of particulars or any of the other early disclosures she seeks. *Finally*, the use of a grand jury sitting in White Plains to return the Indictment in this case was entirely proper.

BACKGROUND

On June 29, 2020, a grand jury sitting in this District returned an indictment charging the defendant in six counts. On July 2, 2020, the Federal Bureau of Investigation (“FBI”) arrested the defendant. On July 8, 2020, a grand jury sitting in this District returned a superseding indictment (the “Indictment”) containing the same charges, with ministerial corrections. (Dkt. No. 17). Count One of the Indictment charges the defendant with conspiring with Jeffrey Epstein and others to entice minors to travel to engage in illegal sex acts, in violation of 18 U.S.C. § 371. Count Two charges the defendant with enticing a minor to travel to engage in illegal sex acts, and aiding and abetting the same, in violation 18 U.S.C. §§ 2422 and 2. Count Three charges the defendant with conspiring with Epstein and others to transport minors to participate in illegal sex acts, in violation of 18 U.S.C. § 371. Count Four charges the defendant with transporting minors to participate in

illegal sex acts, and aiding and abetting the same, in violation of 18 U.S.C. §§ 2423 and 2. Counts Five and Six charge the defendant with perjury, in violation of 18 U.S.C. § 1623.¹

ARGUMENT

I. Jeffrey Epstein's Non-Prosecution Agreement Is Irrelevant to This Case

The defendant seeks to dismiss the Indictment based on a 2007 non-prosecution agreement (“NPA”) between Jeffrey Epstein and the U.S. Attorney’s Office for the Southern District of Florida (the “USAO-SDFL”). (Def. Mot. 1). She does so despite the fact that: (1) she did not negotiate the NPA, was not a party to the NPA, and her name is not contained anywhere in the document; and (2) her crimes are not identified or named in any way in the NPA. Essentially, the defendant claims she is immune from prosecution for *any* federal crime, during *any* time period, *anywhere*, in the United States, based on the language of a document that does not name her and which she did not sign. Moreover, she seeks to enforce the NPA against a U.S. Attorney’s Office that did not negotiate the NPA and is not bound by it.

The defendant’s arguments are meritless, and the Court should reject them. As a threshold matter, under the well-settled law of this Circuit, the NPA is not enforceable in this District, because the USAO-SDFL’s agreement with Jeffrey Epstein is not binding on the U.S. Attorney’s Office for the Southern District of New York (the “USAO-SDNY”). Moreover, even if the NPA applied to this District—which it does not—the NPA does not immunize the defendant from prosecution for the crimes charged in the Indictment. Finally, because the defendant has failed to

¹ As the Government has repeatedly indicated, the investigation into Jeffrey Epstein’s co-conspirators remains ongoing. (*See, e.g.*, Gov’t Letter dated Aug. 21, 2020, Dkt. No. 46; Gov’t Letter dated Oct. 6, 2020, Dkt. No. 60; Gov’t Letter dated Oct. 20, 2020, Dkt. No. 65). To the extent that investigation results in additional charges against the defendant, the Government intends to seek any superseding indictment at least three months in advance of trial. The Government does not anticipate that any new charges would require the production of any additional discovery.

offer any evidence to support her claim that the NPA applies to this District, to the defendant, or to the crimes in the Indictment, the Court should deny the defendant's request for discovery and an evidentiary hearing.

A. The NPA Does Not Bind the Southern District of New York

As an initial matter, the NPA is not enforceable in this District. To the contrary, it is black-letter law in this Circuit that a plea agreement in one district does not apply elsewhere, in the absence of express indications not present here. Indeed, the Second Circuit has considered and rejected the exact arguments the defendant advances in her motion. The defendant's motion is without any basis in the law and should be denied.

It is well settled in the Second Circuit that "a plea agreement in one U.S. Attorney's office does not, unless otherwise stated, bind another." *United States v. Prisco*, 391 F. App'x 920, 921 (2d Cir. 2010) (citing *United States v. Annabi*, 771 F.2d 670, 672 (2d Cir. 1985) (per curiam) ("A plea agreement binds only the office of the United States Attorney for the district in which the plea is entered unless it affirmatively appears that the agreement contemplates a broader restriction.")); *United States v. Salameh*, 152 F.3d 88, 120 (2d Cir. 1998). This Circuit "presumes a narrow reading of the boundaries of a plea agreement unless a defendant can affirmatively establish that a more expansive interpretation was contemplated." *United States v. Laskow*, 688 F. Supp. 851, 854 (E.D.N.Y. 1988) (citing *Annabi*, 771 F.2d at 672), *aff'd*, 867 F.2d 1425 (2d Cir. 1988)(tbl.). To meet this burden, a defendant must establish that either the text of the agreement or the "negotiations between defendant and prosecutor" indicate a promise to bind other districts. *United States v. Russo*, 801 F.2d 624, 626 (2d Cir. 1986). For the reasons set forth below, the defendant has failed to establish that the USAO-SDFL promised Epstein that the NPA would bind other districts.

1. The Text of the Agreement Does Not Contain a Promise to Bind Other Districts

Turning first to the text of the NPA, the terms of the agreement do not contain an “affirmative appearance” that the parties who signed the NPA intended to bind any other U.S. Attorney’s Office. To begin with, there can be no dispute that only representatives of the USAO-SDFL signed the agreement. There is no signature block for, nor specific mention of, any other district or component of the Department of Justice.

In her motion, the defendant argues that the words “United States” in the NPA evince an intent to bind the entire United States Government. (Def. Mot. 1 at 18). But the Second Circuit has rejected this very argument: “[t]he mere use of the term ‘government’ in the plea agreement does not create an affirmative appearance that the agreement contemplated barring districts other than the particular district entering into the agreement.” *Salameh*, 152 F.3d at 120 (citations and internal quotation marks omitted). This rule also extends to plea agreements that use the term “United States.” See *United States v. Brown*, No. 99-1230, 2002 WL 34244994, at *2 (2d Cir. Apr. 26, 2002) (summary order) (plea agreement does not bind other districts “even if the plea agreement purports to bind ‘the Government’” or the “United States”); *United States v. Bruno*, 159 F. Supp. 3d 311, 321 (E.D.N.Y. 2016) (“The Court disagrees with Defendant’s argument that the phrase ‘United States’ shows an intent to bind all United States Attorney’s Offices. Rather, the plea agreement covers only Defendant’s liability in the SDFL.”).

As the Second Circuit first explained in *Annabi*, plea agreements apply only in the district in which they are executed, absent evidence that the parties agreed to broader restrictions:

As an original proposition, a plea agreement whereby a federal prosecutor agrees that ‘the Government’ will dismiss counts of an indictment . . . might be thought to bar the United States from reprosecuting the dismissed charges in any judicial district unless the agreement expressly limits the scope of the agreement to the

district in which the dismissed charges are initially brought. However, the law has evolved to the contrary. A plea agreement binds only the office of the United States Attorney for the district in which the plea is entered unless it affirmatively appears that the agreement contemplates a broader restriction.

Annabi, 771 F.2d at 672 (citations omitted). Thus, under *Annabi* and its progeny, a plea agreement only binds the U.S. Attorney's Office that executes the agreement, even if, as here, the agreement references "the Government" or "the United States" and even if the agreement lacks a provision that "expressly limits the scope of the agreement to the district" in which the agreement was entered.²

Confronted with this clear and controlling authority, the defendant's motion attempts to limit the rule of *Annabi* by noting that some decisions applying *Annabi* concerned plea agreements that also included express provisions limiting the enforceability of the agreements to the districts in which they were entered. (Def. Mot. 1 at 22). Essentially, the defendant argues that without an express provision limiting the scope of the agreement, every plea agreement should be interpreted to bind the entire federal government. But the law in this Circuit holds the opposite: the presumption is that a plea agreement in one district does not bind another, absent an affirmative appearance that the agreement extends more broadly. *See Laskow*, 688 F. Supp. at 854 ("Defendant's argument, in effect, is that unless there is an explicit statement to the contrary, it is presumed that a non-prosecution agreement binds offices of the United States Attorney that are

² The defendant's motion emphasizes that the Second Circuit has held, as a general matter, that plea agreements are construed against the Government. (Def. Mot. 1. at 13). That does not carry the day here, as *Annabi* provides a specific mode of analysis for determining whether a plea agreement applies to other districts, and the defendant's motion fails under *Annabi*. More broadly, the authorities the defendant cites for this general principle arise from circumstances in which a defendant has sought to enforce his *own* a plea agreement against the Government. (*See, e.g.*, Def. Mot. 1 at 13 (citing *United States v. Feldman*, 939 F.3d 182, 189 (2d Cir. 2019) (analyzing claim by defendant seeking to enforce promises he claimed prosecutors had made to him)). Notably, the defendant has cited no authority for the proposition that plea agreements are to be construed in favor of a third party who was not involved in plea negotiations.

not parties to the agreement. This position is at odds with the law in this Circuit, which presumes a narrow reading of the boundaries of a plea agreement unless a defendant can affirmatively establish that a more expansive interpretation was contemplated.”) (citing *Annabi*, 771 F.2d at 672). To hold otherwise would turn *Annabi* on its head.

The defendant next argues that the following provision of the NPA evinces an intent to bind the entire federal government:

In consideration of Epstein’s agreement to plead guilty and to provide compensation in the manner described above, if Epstein successfully fulfills all of the terms and conditions of this agreement, the United States also agrees that it will not institute any criminal charges against any potential co-conspirators of Epstein, including but not limited to Sarah Kellen, Adriana Ross, Lesley Groff, or Nadia Marcinkova.

NPA at 5; Def. Mot. 1 at 20-21. Aside from the reference to “United States” which, as noted above, is insufficient, the defendant does not point to any language in this provision that purportedly binds other districts. Instead, she argues that the absence of language specifically *limiting* this provision to the USAO-SDFL demonstrates an intent to bind the entire federal government. This argument fails, for at least three reasons. First, the defendant’s argument inverts the holding of *Annabi*: in this Circuit, the presumption is that plea agreements bind only the district in which they are entered, absent affirmative indications otherwise. Put differently, the *absence* of express limiting language in this provision is not an affirmative indication of a broader application. Accordingly, under Second Circuit law, the absence of limiting language in this specific provision provides no support for the defendant’s motion.

Second, the defendant’s argument acknowledges that the plain terms of the NPA immunized Epstein from prosecution in “this District,” that is, the Southern District of Florida. *See* NPA at 2 (“After timely fulfilling all the terms and conditions of the Agreement, no

prosecution . . . will be instituted in this District”). In other words, the NPA was expressly limited to the USAO-SDFL.³ Given this provision, it would be unnatural to read a broader application to other districts—based on no textual indicia—into the provision relating to co-conspirators. Moreover, the defendant’s reading of the NPA would require the Court to adopt the view that, where a plea agreement contains limiting terms, they must be repeated in every paragraph in order to have their natural and common-sense effects.

Third, and perhaps most importantly, the defendant’s interpretation strains common sense. In order to accept the defendant’s arguments, the Court would have to reach the counterintuitive conclusion that Epstein expressly bargained for *broader* immunity for his co-conspirators than he did for himself. That is, under the defendant’s reading of the agreement, Epstein bargained to protect co-conspirators nationally for crimes they committed with Epstein, but Epstein only sought protection for himself in the Southern District of Florida. The text of the agreement does not support such a puzzling interpretation. Instead, the more natural reading of the NPA is that its repeated references to the U.S. Attorney’s Office and “this District” reflect a universal limitation on the NPA: it applies only to the USAO-SDFL.

Finally, at several points in her motion, the defendant emphasizes that the NPA contains the word “global,” but she does not appear to argue that this creates an affirmative appearance that the NPA binds other districts. (Def. Mot. 1 at 9, 12). Nor could she. The phrase “Epstein seeks to resolve globally his state and federal liability,” by its terms, refers to Epstein’s liability alone. *See* NPA at 2. Moreover, this language appears directly after several paragraphs describing investigations conducted by the Florida State Attorney’s Office and the USAO-SDFL. *See id.* at 1-2. Thus, in this context, the terms “global” and “state and federal liability” plainly refer to

³ In fact, the NPA states that it was executed “on the authority of R. Alexander Acosta, United States Attorney for the Southern District of Florida.” NPA at 2.

prosecutions by those two offices, and only those two offices.⁴ The defendant therefore cannot argue that the word “global” in this provision means that the NPA binds the entire federal government.

In sum, the defendant points to nothing in the text of the NPA that could possibly be construed to bind other districts. To the contrary, there are affirmative indications in the text that the NPA applies only to the USAO-SDFL. Accordingly, under *Annabi*, the NPA is only binding on the USAO-SDFL, and the defendant’s motion fails as a matter of law.

2. The Defendant Has Offered No Evidence That the NPA Binds Other Districts

Although a defendant may offer evidence that the negotiations between the prosecutor and defendant contained a promise to bind other districts, *Russo*, 801 F.2d at 626, the defendant has failed to do so here. The defendant’s motion is replete with bare assertions and conclusory allegations, but it fails to point to any evidence that the NPA binds the USAO-SDNY.

The lone document the defendant offers in support of her motion is a privilege log filed by the USAO-SDFL in connection with a lawsuit filed by Epstein’s victims. (Def. Mot. 1 at 22). The log reflects that the FBI agents working with the USAO-SDFL interviewed witnesses in other states—including New York—during their investigation. That is entirely unremarkable, since federal investigations frequently involve gathering evidence in other states. This does not in any way establish the substantive involvement of any other districts in the prior investigation, let alone that the USAO-SDFL promised Epstein that the U.S. Attorney’s offices in those states would be bound by the NPA.

⁴ Interpreting the term “federal liability” in this provision could not be read to encompass all U.S. Attorney’s offices without also interpreting its neighboring term, “state . . . liability,” to refer to every state prosecutor’s office in all fifty states. The USAO-SDFL clearly did not—and could not—make such a broad promise.

The privilege log also does not establish that the USAO-SDFL involved other U.S. Attorney's Offices in plea negotiations with Epstein. Grasping at straws, the defendant points to a notation in the privilege log, which contains an entry for handwritten notes, reflecting that the prosecutor in the USAO-SDFL spoke with an Assistant U.S. Attorney in New York. (Def. Mot. 1 at 22). The notes referenced in the privilege log are attached hereto as Exhibit 1. As the notes reflect, the prosecutor at the USAO-SDFL reached out to an Assistant U.S. Attorney at the USAO-SDNY to ask about a civil lawsuit relating to Epstein that was handled by the Civil Division of this Office in the 1990s. The Government is producing to defense counsel today emails that confirm that this was the nature of the contact.⁵ One of those emails is attached hereto as Exhibit 2 for the Court's reference. Put simply, those communications provide no indication that the USAO-SDNY was involved in plea negotiations with Epstein. Rather, the USAO-SDFL asked about an old civil case involving Epstein that an AUSA at the USAO-SDNY happened to handle years earlier. In sum, the privilege log in no way establishes that other districts were involved in negotiating the NPA, much less that Epstein was promised that the NPA would bind other districts.

The defendant proffers no other documentary evidence beyond the privilege log. Instead, without any citation, she broadly alleges that "senior levels of Main Justice were directly involved in the negotiation and approval of the NPA." (Def. Mot. 1. at 22). This vague and unsworn allegation is not evidence. Moreover, any contacts between the USAO-SDFL and Main Justice

⁵ In response to the allegations raised by the defense's motion, the Government identified the underlying notes referenced in the privilege log. The Government is producing those underlying notes, as well as the relevant emails, to defense counsel today. The Government has also been informed by a human resources representative that payroll records reflect that the Assistant U.S. Attorney referenced in the privilege log left the USAO-SDNY on or about April 29, 2007, months before the NPA was executed. Although the Government has been informed that Human Resources records do not contain information regarding a division transfer, the Government understands from colleagues that the Assistant U.S. Attorney worked in the Civil Division in the 1990s and worked in the Criminal Division in the 2000s.

would not, without more, establish that the USAO-SDFL intended to bind other districts, much less that the USAO-SDFL communicated a promise to Epstein that the NPA would extend beyond the USAO-SDFL. The defendant's failure to offer any evidence is fatal to her claim.

Although it is not the Government's burden to address and rebut every innuendo or conclusory statement in the defendant's motion, it is significant here that the circumstances of the NPA have been extensively litigated in a civil lawsuit, and have also been investigated by the Department of Justice's Office of Professional Responsibility ("OPR"), resulting in a report of OPR's findings (the "OPR Report").⁶ The records of both matters provide no support for the defendant's claims.

The OPR Report notes that the USAO-SDFL periodically consulted with the Chief of the Department of Justice Child Exploitation and Obscenity Section ("CEOS"), Andrew Oosterbaan, during the investigation and plea discussions, and that the CEOS Chief attended a meeting with defense counsel, during which defense counsel made a pitch that Epstein should not be prosecuted. November 2020 Report, United States Department of Justice, Office of Professional Responsibility, at 61-62. However, although the line prosecutor, Maria Villafaña, subsequently sent the CEOS Chief a draft of the NPA, the OPR Report reflects that the CEOS Chief reported to

⁶ The defendant's motion cites to the executive summary of the OPR Report. However, the entire report is publicly available, is attached as Exhibit 3 hereto, and has been widely reported on and published by the media. *See, e.g.*, "Read the report: Investigation into the U.S. Attorney's Office for the Southern District of Florida's Resolution of Its 2006–2008 Federal Criminal Investigation of Jeffrey Epstein and Its Interactions with Victims during the Investigation," *Wash. Post* (Nov. 12, 2020), <https://www.washingtonpost.com/context/read-the-report-investigation-into-the-u-s-attorney-s-office-for-the-southern-district-of-florida-s-resolution-of-its-2006-2008-federal-criminal-investigation-of-jeffrey-epstein-and-its-interactions-with-victims-during-the-investigation/db9373e8-22f8-4712-b4a7-be844d162de0/>.

OPR that “he did not recall having read the NPA at this juncture and ‘had no involvement with it.’

OPR Report at 64 n. 105.⁷

Beyond this, the OPR Report and the record in the civil case note contacts with Main Justice about the NPA, but only *after* the NPA was negotiated, drafted, and signed. In the civil case, the district court detailed the history of the plea negotiations—and noted that, after the NPA was signed, Epstein’s counsel appealed to officials in Washington, D.C., hoping to avoid enforcement of the NPA’s requirement that Epstein plead guilty to state offenses, as the agreement required. *Doe I v. United States*, 359 F. Supp. 3d 1201, 1212-13 (S.D. Fla. 2019). As the district court noted, that appeal was rejected. *Id.* at 1213.

In particular, and following the execution of the NPA, the report reflects that the USAO-SDFL contacted the CEOS Chief in connection with a letter from Epstein’s counsel, Kenneth Starr, protesting about complying with certain parts of the NPA. OPR Report at 95. According to the report:

At the same time, at [USAO-SDFL supervisor] Lourie’s request, Villafañá sent the NPA and its addendum to Lourie and Oosterbaan. Oosterbaan responded to Lourie that he was “not thrilled” about the NPA; described Epstein’s conduct as unusually “egregious,” particularly because of its serial nature; and observed that the NPA was “pretty advantageous for the defendant and not all that helpful to the victims.” He opined, however, that the Assistant Attorney General would not and should not consider or address the NPA “other than to say that she agrees with it.” During her OPR interview, [Assistant Attorney General] Fisher did not recall reading Starr’s letter or discussing it with Oosterbaan, but believed the comment about her “agree[ing] with it” referred to a federal prosecution of Epstein, which she believed was appropriate. She told OPR, however, that she “played no role in” the NPA and did not review or approve the agreement either before or after it was signed.

⁷ The OPR Report further reflects that, at the time, a supervisor at the USAO-SDFL noted the CEOS had “no approval authority.” OPR Report at 60.

OPR Report at 95. The OPR Report further notes that, thereafter, Epstein sought to avoid complying with the NPA entirely, and his attorneys appealed to Main Justice in the hopes of voiding the agreement. OPR Report at 94-108. That appeal was not successful. *Id.* In any event, the involvement of Main Justice alone would not begin to establish the very different proposition that Main Justice viewed the NPA as binding any district other than USAO-SDFL, let alone specifically considered and approved such an outcome, or communicated such a promise to Epstein.

Further still, the record in the civil case makes clear that the USAO-SDFL's position was that the NPA did not bind other districts. In a July 5, 2013 brief, the USAO-SDFL stated:

[T]he Non-Prosecution agreement simply obligated the government not to prosecute Epstein *in the Southern District of Florida* for the offenses set forth in the Non-Prosecution Agreement. The Non-Prosecution Agreement does not bar the United States from bringing federal criminal charges against Epstein for the offenses set forth in the Non-Prosecution Agreement in any other district in the nation. Neither does the Non-Prosecution Agreement bar prosecution in any district for offenses not identified in the agreement.

Government Brief, 08 Civ. 80736 (KAM), Dkt. No. 205-2, at 10-11 (S.D. Fla.) (emphasis in original); *see also* OPR Report at 81, n.125 (observing that a supervisor at the USAO-SDFL “pointed out that the NPA was not a ‘global resolution’ and other co-conspirators could have been prosecuted ‘by any other [U.S. Attorney’s] office in the country.’”).

As the USAO-SDFL has explained, the NPA did not bind other districts, and could not. That is because the USAO-SDFL lacked the authority to do so under applicable Department of Justice guidelines:

Significantly, under the governing provision of the United States Attorney’s Manual, the USAO-SDFL did not have the authority to unilaterally bar Epstein’s prosecution in any other district in the country: ‘No district or division shall make any agreement,

including any agreement not to prosecute, which purports to bind any other district(s) or division without the express written approval of the United States Attorney(s) in each affected district and/or the Assistant Attorney General of the Criminal Division.’

Government Brief, 08 Civ. 80736 (KAM), Dkt. No. 205-2, at 11 n.11 (S.D. Fla.) (quoting United States Attorney’s Manual, 9-27.641 (Multi-District (Global) Agreement Requests)). Significantly, this brief was signed by the same prosecutor who negotiated and signed the NPA. *Id.* Although the defendant makes the sweeping, self-serving, and unsupported allegation that “the government had every reason to foresee a potential prosecution of Epstein’s co-conspirators in this District and, after multiple layers of review within the Department of Justice, intended to agree to preclude it,” the USAO-SDFL’s brief says otherwise. (Def. Mot. 1 at 22). Further still, the record developed in both civil litigation and OPR’s investigation does not support this claim.

As the foregoing makes clear, the defendant has failed to produce any evidence that the USAO-SDFL promised Epstein that other districts would be bound by the NPA. There is no “affirmative appearance” that the NPA binds other districts, and the motion should be denied. Under *Annabi* and its progeny, the defendant has failed to establish that the NPA binds other districts. For this reason alone, the defendant’s motion should be dismissed, in keeping with the well-established law in this Circuit.⁸

⁸ In her motion, the defendant asks this Court to apply a bizarre and unprecedented choice-of-federal-law doctrine, under which the defendant asks the Court to apply non-existent rulings from the Eleventh Circuit on an issue that Court does not appear to have reached. (Def. Mot. 1 at 23-25). This argument has no legal foundation, and the defendant offers no authority for the proposition that federal plea agreements are governed by the choice of law principles that apply to conflicting state laws. *Annabi* is the binding law of this Circuit, and this Court must apply it.

B. The NPA Does Not Immunize Maxwell from Prosecution

Even if the NPA bound this District—which it does not—the NPA provides no basis for dismissing the Indictment. The NPA does not protect the defendant for at least two reasons. First, the text of the NPA specifically limits the scope of the NPA to certain federal crimes committed between 2001 and 2007, and thus the NPA does not apply to the distinct offenses and time periods charged in the Indictment. Second, the NPA does not protect the defendant at all, because the mere use of the word “co-conspirator” does not establish that the defendant was among the class of persons contemplated by the agreement, much less that the defendant has standing to enforce it.

1. The NPA Is Limited to Particular Crimes Between 2001 and 2007

Contrary to the defendant’s assertions, the NPA did not provide *carte blanche* immunity to Epstein or his “co-conspirators.” In fact, the NPA contains detailed provisions that limit the scope of the crimes immunized in the agreement.

The NPA begins by outlining the scope of the USAO-SDFL investigation, delineating the timeframe of the offense conduct under investigation (“from in or around 2001 through in or around September 2007”), and listing each and every statutory offense under investigation. NPA at 1. The NPA does this for a reason, because these terms are later used in the agreement to set the boundaries of immunity. In particular, the agreement provides:

[N]o prosecution for the offenses set out on pages 1 and 2 of this agreement, nor any other offenses that have been the subject of the joint investigation by the Federal Bureau of Investigation and the United States Attorney’s Office, nor any offenses that arose from the Federal Grand Jury investigation will be instituted in this District, and the charges against Epstein if any, will be dismissed.

NPA at 2. Thus, the NPA barred the USAO-SDFL from prosecuting Epstein for the specific

offenses enumerated in the NPA.⁹ While these same limitations are not repeated in the provision that purports to immunize “co-conspirators,” these limitations apply with equal force across the agreement, because that is the only common-sense way to read the NPA. Indeed, and as noted above in a related context, it would be exceedingly strange to interpret the “co-conspirator” provision to extend broader immunity than Epstein negotiated for himself.

The defendant may assert that the “co-conspirator” provision has absolutely no limitations, but such an argument would lead to absurd results. In particular, in arguing that the “co-conspirator” provision lacks any temporal or statutory limitations whatsoever, the defendant seems to claim that the NPA immunized her for *future* crimes including, for example, perjury offenses that she is charged with committing almost a decade after the NPA was executed. (Def. Mot. 1 at 32 (“For the foregoing reasons, Ms. Maxwell respectfully requests that the Court dismiss the indictment.”)). Although the defendant does not highlight this point in her motion—perhaps recognizing how absurd it would be—that is the natural consequence of her illogical interpretation of the NPA. Despite advancing an argument that strains common sense, the defendant cites no case in which a court has interpreted a plea agreement to bar prosecution for crimes that pre- or post-dated the period covered by the agreement. The Government is aware of no such authority. *See United States v. Hallahan*, 756 F.3d 962, 974 (7th Cir. 2014) (rejecting defense argument that plea agreement barred prosecution for subsequent bail jumping, and, in interpreting the

⁹ By its plain terms, the NPA did not immunize Epstein for his “background,” as the defendant suggests. (Def. Mot. 1 at 27). This provision refers, instead, to a list of “offenses” under federal law. Indeed, it is unclear how any plea agreement could immunize a defendant’s “background.” Similarly, the fact that the USAO-SDFL interviewed Minor Victim-2 does not mean that this case “arose out of” the USAO-SDFL investigation, an assertion the defendant’s motion does not explain or support with evidence. As the Indictment makes clear, the events underpinning the Indictment involve multiple victims and specific legal charges that were not within the scope of the USAO-SDFL investigation. As discussed in greater detail below, Minor Victim-1 and Minor Victim-3 were never interviewed by the USAO-SDFL, and they did not agree to speak with law enforcement until 2019.

Government's promises in the plea agreement to only cover past crimes, observing that "not limiting the prohibition to past crimes would make it absurd and probably illegal") (citing *Aronson v. K. Arakelian, Inc.*, 154 F.2d 231, 233 (7th Cir. 1946) ("[A] contract will not be presumed to have imposed an absurd or impossible condition on one of the parties, but will be interpreted as the parties must be supposed to have understood the conditions at the time."))).

Finally, the defendant claims that the NPA covers all violations of the Mann Act. (Def. Mot. 1 at 26 n.4). Not so. The NPA lists specific statutory provisions within the Mann Act, but none of the provisions contained in the Indictment. In particular, the NPA expressly covers violations of 18 U.S.C. §§ 2422(b), 2423(b), and 2423(e), but it does not include the particular provisions charged in the Indictment against Maxwell, which alleges violations of §§ 2422(a) and 2423(a). These are plainly not the same crimes, and a plea agreement cannot be read to immunize unnamed crimes in the general ballpark of the specific crimes enumerated in the agreement. The defendant cites no authority that supports her overbroad reading of this provision.

Accordingly, the NPA immunizes only certain, specific offenses, none of which are contained in the Indictment. As a result, the defendant cannot invoke the NPA to seek the dismissal of the Indictment.

2. The NPA Does Not Confer Enforceable Rights on Maxwell

Even if this Court were to construe the NPA beyond its plain terms to preclude prosecutions for the crimes contained in the Indictment, the defendant has established neither that those protections extend to Maxwell specifically, nor that she has standing to pursue those protections.

The defendant asks this Court to interpret the NPA according to contract principles, and accord the defendant standing to enforce the NPA as a third party beneficiary. As a general matter, plea agreements are interpreted using principles from contract law, but that maxim is not without

limitations. As the defendant's motion recognizes, the Second Circuit has emphasized that plea agreements differ from commercial contracts in meaningful respects. (Def. Mot. 1 at 30 (citing *United States v. Feldman*, 939 F.3d 182, 189 (2d Cir. 2019) (“[W]hile the district court’s analysis might have been compelling with respect to a contract arising out of commercial negotiations among private parties, we believe the court did not correctly apply the standards that govern the interpretation of plea agreements with the government. We have long recognized that plea agreements are significantly different from commercial contracts.”))). Accordingly, although the third party beneficiary doctrine is a tenet of contract law, its application to plea agreements under federal law is a separate question.

The defendant correctly notes that plea agreements may address leniency for third parties. (Def. Mot. 1 at 15). However, it does not necessarily follow that a third party may enforce such a promise. Indeed, it is far from clear that, under federal law, a third party may enforce a plea agreement. At least one court in this Circuit has noted the absence of authority that a third party has standing to enforce another individual’s plea agreement. *See Santobello v. United States*, No. 94 Cr. 119 (RPP), 1998 WL 113950, at *3 (S.D.N.Y. Mar. 13, 1998) (“Even if Santobello could establish the existence of plea agreements between the Government and his co-defendants, there is little known authority that would allow him to enforce the agreements as a third party beneficiary.”) (citing *United States v. Lopez*, 944 F.2d 33, 36-37 (1st Cir. 1991)).

Following this logic, at least one court has concluded that third parties lack standing to enforce plea agreements. In *United States v. Mariamma Viju*, the defendant claimed that the Government had entered into a plea agreement with her husband, under which the Government had promised not to prosecute her. No. 15 Cr. 240, 2016 WL 107841, at *1 (N.D. Tex. Jan. 11, 2016). Observing that the principles governing interpretation of plea agreements diverge in many

respects from those underlying contract law, the district court concluded that “third-party beneficiaries have no contractual right to enforce plea agreements.” *Id.* at *3-4. The court reasoned, “[t]he right to enforce a plea deal does not exist for its own sake; rather, it is a means to achieve fairness in plea bargaining.” *Id.* at *4. That is because a defendant has the right to enforce his plea agreement, and “enforcement by third parties adds nothing to protecting the defendant’s right.” *Id.* The same holds true here.

In support of her claim that she has standing to enforce the NPA, the defendant relies upon three district court decisions, none of which analyzed the threshold question of whether third party standing concepts from contract law apply to plea agreements. In *United States v. Florida West Int’l Airways, Inc.*, 853 F. Supp. 2d 1209, 1228 (S.D. Fla. 2012), the district court applied the third party beneficiary doctrine to a former airline employee based on a prior plea agreement with the airline that immunized, among others, current and former employees of the airline and its subsidiaries. In its analysis, however, the court applied the doctrine without analyzing the question of whether third party beneficiary standing principles apply to plea agreements. *Id.* For similar reasons, the defendant’s reliance on *United States v. El-Sadig*, 133 F. Supp. 2d 600, 608-09 (N.D. Ohio 2001) is misplaced. In that case, the court permitted a third party to invoke a plea agreement, but it did not analyze or address whether third party standing rules apply to plea agreements. *Id.* Likewise, in *United States v. CFW Const. Co.*, 583 F. Supp. 197, 203 (D.S.C. 1984), the court applied the third party beneficiary doctrine, but relied solely on contracts treatises for support, and did not analyze whether that doctrine should be applied to plea agreements.

In any event, even if third party beneficiaries had standing to enforce federal plea agreements, the defendant has failed to establish that *she* is a third party beneficiary of the NPA. In order to establish that she has enforceable rights under the NPA, the defendant must show that

“a direct and primary object of the contracting parties was to confer a benefit on the third party.” *Fla. W. Int’l Airways, Inc.*, 853 F. Supp. 2d at 1228 (quoting *Bochese v. Town of Ponce Inlet*, 405 F.3d 964, 982 (11th Cir. 2005)). In other words, “the intent of the parties is the key” to evaluating whether an individual is a third party beneficiary. *Id.*

Here, the defendant has offered no evidence that the parties intended to confer a benefit on her in particular, or that her crimes in the 1990s make her a member of the class of “co-conspirators” the parties had in mind when they negotiated the NPA. To the contrary, the OPR’s investigation of the circumstances surrounding the inclusion of this provision in the NPA strongly undercuts any such argument, and OPR’s findings demonstrate that the parties did *not* intend to confer a benefit on the defendant. With respect to the “co-conspirator” provision, the OPR Report concluded, in relevant part:

Other than various drafts of the NPA and of a federal plea agreement, OPR found little in the contemporaneous records mentioning the provision and nothing indicating that the subjects discussed or debated it—or even gave it much consideration. Drafts of the NPA and of the federal plea agreement show that the final broad language promising not to prosecute “any potential co-conspirators of Epstein” evolved from a more narrow provision sought by the defense. The provision expanded as [USAO-SDFL prosecutor Maria] Villafañá and defense counsel exchanged drafts of, first, a proposed federal plea agreement and, then, of the NPA, with apparently little analysis and no substantive discussion within the USAO about the Provision.

OPR Report at 166. With respect to Maxwell in particular, OPR interviewed Maria Villafañá, the lead prosecutor on the case, and noted:

Villafañá acknowledged that investigators were aware of Epstein’s longtime relationship with a close female friend who was a well-known socialite, but, according to Villafañá, in 2007, they “didn’t have any specific evidence against her.” Accordingly, Villafañá believed that the only “co-conspirators” of Epstein who would benefit from the provision were the four female assistants identified by name.

OPR Report at 167.¹⁰ After reviewing the facts and circumstances of the negotiation, OPR concluded that “the evidence does not show that [Former USAO-SDFL U.S. Attorney Alex] Acosta, [Former USAO-SDFL supervisor Andrew] Lourie, or Villafaña agreed to the nonprosecution provision to protect any of Epstein’s political, celebrity, or other influential associates.” OPR Report at 168.¹¹

In view of OPR’s conclusions—and in the absence of any evidence to the contrary proffered by the defendant—the defendant has failed to establish that that she was an intended third party beneficiary of the NPA. Accordingly, the defendant lacks standing to enforce the NPA.

C. The Defendant Has Offered No Basis for Additional Discovery or a Hearing

The defendant’s motion for discovery and a hearing fares no better. Lacking any evidence—much less any legal authority—that the NPA applies to this District or the crimes in the Indictment, the defendant asks the Court to order discovery and conduct a hearing. In short,

¹⁰ The OPR Report further reflects that in OPR’s interview of Villafaña, she reported that she did not have anyone in mind aside from the four individuals named in the “co-conspirator” provision: “Villafaña told OPR that she was willing to include a non-prosecution provision for Epstein’s co-conspirators, who at the time she understood to be the four women named in the proposed agreement, because the USAO was not interested in prosecuting those individuals if Epstein entered a plea. Villafaña told OPR, ‘[W]e considered Epstein to be the top of the food chain, and we wouldn’t have been interested in prosecuting anyone else.’ She did not consider the possibility that Epstein might be trying to protect other, unnamed individuals, and no one, including the FBI case agents, raised that concern.” OPR Report at 70. Further, the OPR Report notes that: “Villafaña told OPR that, apart from the women named in the NPA, the investigation had not developed evidence of ‘any other potential co-conspirators.’” *Id.* at 81. Similarly, the report reflects that a supervisor at USAO-SDFL told OPR “that it never occurred to him that the reference to potential co-conspirators was directed toward any of the high-profile individuals who were at the time or subsequently linked with Epstein.” OPR Report at 80-81.

¹¹ Although the defendant correctly notes that the OPR Report reflects that the prosecutor remarked that Epstein “wanted to make sure that he’s the only one who takes the blame for what happened,” OPR Report at 167, that desire explains the existence of the “co-conspirator” provision, but it does not inform its meaning or scope.

the defendant asks this Court to authorize an extensive and burdensome fishing expedition, premised on the defendant's pure conjecture. The Court should deny the motion.

Although the defendant asserts that the Court is obligated to conduct a hearing, she has failed to establish that any hearing is warranted. The defendant argues that courts conduct evidentiary hearings "where the existence or scope of a plea agreement or non-prosecution agreement is in genuine dispute." (Def. Mot. 1 at 29). But the defendant has not established any genuine factual dispute in this case that a hearing would be required to resolve. The defendant has offered bare conclusions in support of her motion, which are refuted by governing law, record evidence, and the four corners of the agreement itself. That is not a basis for a hearing.

As the Second Circuit explained in *United States v. Aleman*, 286 F.3d 86 (2d Cir. 2002), "a district court need not conduct a hearing every time a defendant summarily accuses the government of failing to live up to an alleged bargain." *Id.* at 91. In that case, the court held that a hearing was required because the defendant had submitted affidavits from his attorney, as well as corroborating affidavits from other attorneys, and the Government had not submitted any evidence. *Id.*; see also *United States v. Sattar*, 272 F. Supp. 2d 348, 383 (S.D.N.Y. 2003) (applying *Aleman*, and ordering an evidentiary hearing based upon the defendant's submission of an affidavit from an attorney with knowledge of the alleged oral agreement). Similarly, in *United States v. Feldman*, 939 F.3d 182 (2d Cir. 2019), the Second Circuit held that a hearing was required based on the defendant's uncontested assertions about specific representations made to him by a prosecutor. *Id.* at 184, 190. Here, by contrast, the defendant has offered no evidence in support of her allegations.

The defendant cannot seriously argue that she has made the type of showing that requires a hearing. For example, she has not offered any affidavits from Epstein's former defense attorneys claiming that the USAO-SDFL made promises that were not contained in the NPA. Nor has she

pointed to anything in the extensive record of either the OPR investigation or the civil litigation surrounding the NPA that would suggest that the NPA applies to this District, or to the crimes in the Indictment, or to Maxwell. In the absence of any such evidence—and in the face of substantial contrary evidence gathered in the civil litigation and OPR investigation—the Court has no obligation to conduct a hearing.

For similar reasons, the defendant’s motion for discovery should be denied. To the extent the defendant seeks discovery under Rule 16, she has failed to meet her burden. A defendant seeking discovery under Rule 16 “must make a *prima facie* showing of materiality and must offer more than the conclusory allegation that the requested evidence is material.” *United States v. Urena*, 989 F. Supp. 2d 253, 261 (S.D.N.Y. 2013) (citations omitted). Here, the defendant has offered nothing more than her conjecture that some unspecified evidence might exist. The motion should be denied.

II. The Indictment Is Timely

Counts One through Four are timely charged because the applicable limitations period, 18 U.S.C. § 3283 (2003), permits prosecution for offenses “involving the sexual or physical abuse... of a child” at any time “during the life of the child,” and each of the victims identified in the Indictment remains alive. Maxwell contends that Section 3283 should not be applied to conduct that predated its amendment in 2003 (Def. Mot. 2), but that argument is contrary to the text of the statute, Congress’s clear intent when extending the statute of limitations, and the decisions of other circuits and district courts in this Circuit. In effect, the defendant’s motion asks this Court to break new ground, and become the first court to hold that Section 3283 applies only prospectively.

In the alternative, Maxwell argues that Section 3283 is inapplicable because the offenses charged in the Indictment do not “involv[e] the sexual or physical abuse . . . of a child.” (Def.

Mot. 2 at 12-14). Yet her argument runs contrary to the weight of authority that has adopted the common-sense view that crimes that necessarily entail the sexual or physical abuse of children “involv[e] the sexual or physical abuse of a child.” This Court should do the same and deny the motion.

A. Statutory Background

Between 1990 and 2006, Congress passed a series of laws that expanded the statute of limitations for prosecutions of crimes against minors, ultimately extending the statute of limitations to the lifetime of the minor victim and, for certain offenses, eliminating the statute of limitations entirely. These laws reflect a virtually unbroken congressional policy that the default five-year statute of limitations for federal crimes, 18 U.S.C. § 3282, is inadequate for such offenses. An extended statute of limitations is necessary because “child sex abuse offenses . . . may be difficult to detect quickly,” in part because children often first report their abuse long after it occurs. *Weingarten v. United States*, 865 F.3d 48, 54 (2d Cir. 2017) (citing, e.g., David McCord, *Expert Psychological Testimony About Child Complainants in Sexual Abuse Prosecutions*, 77 J. Crim. L. & Criminology 1, 60-61 (1986)).

In 1990, Congress enacted a new statute of limitation for certain crimes against children, which stated: “No statute of limitation that would otherwise preclude prosecution for an offense involving the sexual or physical abuse of a child under the age of 18 years shall preclude such a prosecution before the child reaches the age of 25 years.” Crime Control Act of 1990, Pub. L. No. 101-647, tit. II, § 225(a), 104 Stat. 4789, 4798 (codified at 18 U.S.C. § 3509(k) (1990)). In 1994, Congress re-codified this provision, moving it to 18 U.S.C. § 3283 with identical language. Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, tit. XXXIII, § 330018(a), 108 Stat. 1796, 2149 (codified at 18 U.S.C. § 3283 (1994)) (“No statute of limitations

that would otherwise preclude prosecution for an offense involving the sexual or physical abuse of a child under the age of 18 years shall preclude such prosecution before the child reaches the age of 25.”).

As the Second Circuit has recognized, “after nearly a decade, Congress began to view even the extended statute of limitations period in the 1994 version of § 3283 as ‘inadequate in many cases’ because it released from criminal liability sex abusers whose crimes were not brought to the attention of federal authorities until after their victims turned twenty-five.” *Weingarten*, 865 F.3d at 54 (citing H.R. Conf. Rep. No. 108–66, at 54 (2003)). Accordingly, in April 2003, Congress amended Section 3283 to permit the prosecution of sex offenses against minors at any time during the lifetime of the minor victim. Prosecutorial Remedies and Tools Against the Exploitation of Children Today Act (“PROTECT Act”) of 2003, Pub. L. No. 108-21, tit. II, § 202, 117 Stat. 650, 660 (codified at 18 U.S.C. § 3283 (2003)) (“No statute of limitations that would otherwise preclude prosecution for an offense involving the sexual or physical abuse, or kidnaping, of a child under the age of 18 years shall preclude such prosecution during the life of the child.”).

In January 2006, Congress further amended Section 3283 to its current form to permit the prosecution of such offenses during the lifetime of the victim or ten years after the offense, whichever is longer. Violence Against Women and Department of Justice Reauthorization Act of 2006, Pub. L. No. 109-162, tit. XI, § 1182(c), 119 Stat. 2960, 3126 (codified at 18 U.S.C. § 3283 (2006)) (“No statute of limitations that would otherwise preclude prosecution for an offense involving the sexual or physical abuse, or kidnaping, of a child under the age of 18 years shall preclude such prosecution during the life of the child, or for ten years after the offense, whichever is longer.”).

Finally, later that same year, Congress enacted a new statute as part of the Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587. That statute eliminated the statute of limitations entirely for certain crimes involving the sexual exploitation of minors. *Id.* tit. II, § 211(1), 120 Stat. at 616 (codified at 18 U.S.C. § 3299).

B. The 2003 Amendment to Section 3283 Applies Retroactively

Counts One through Four of the Indictment charge crimes that occurred between 1994 and 1997. At the time of the offense conduct, the applicable statute of limitations, 18 U.S.C. § 3283 (1994), ran until “the child reaches the age of 25.” However, in 2003, while the statute of limitations had not yet run for the crimes charged in the Indictment,¹² Congress amended the statute, extending the limitations period to permit a prosecution at any time “during the life of the child.” 18 U.S.C. § 3283 (2003). Because the victims are all alive, the Indictment is timely under the 2003 amendment.

Put simply, the 2003 amendment applies to any conduct that could have been charged at the time of its enactment. The legislative purpose behind Section 3283 and a plain reading of the statute compel this conclusion, and courts have repeatedly held that the 2003 amendment applies retroactively, provided that the statute of limitations had not run for the offense at the time of the amendment. *See, e.g., United States v. Leo Sure Chief*, 438 F.3d 920, 922-25 (9th Cir. 2006) (“Because Congress evinced a clear intent to extend, rather than shorten, the statute of limitations applicable to sexual abuse crimes, and because there is no *ex post facto* problem here, the prosecution was timely.”) (citing *United States v. Jeffries*, 405 F.3d 682, 685 (8th Cir. 2005), *cert. denied*, 546 U.S. 1007 (2005)); *United States v. Brown*, 800 F. App’x 455, 461 (9th Cir. 2020) (“Because Congress evinced a clear intent to extend the statute of limitations for these types of

¹² The timeliness of the charges in the Indictment in 2003 is discussed in greater detail below.

crimes in its amendments, and because there is no *ex post facto* problem here, the prosecution was timely.”), *cert. denied*, No. 20-5064, -- S.Ct. --, 2021 WL 78235 (Jan. 11, 2021); *United States v. Pierre-Louis*, No. 16 Cr. 541 (CM), 2018 WL 4043140, at *1 (S.D.N.Y. Aug. 9, 2018) (denying motion to dismiss child exploitation charges as time-barred) (“Defendant’s argument rests on the erroneous premise that the law requires the defendant to have committed the charged offense after the effective date of the extension of the statute of limitations for the charge to not be time-barred. As long as the original statute of limitations had not lapsed when the extension went into effect, the prosecution is not time-barred.”); *United States v. Sensi*, No. 08 Cr. 253, 2010 WL 2351484, at *2 (D. Conn. June 7, 2010) (holding that the 2003 amendment of Section 3283 applies to pre-enactment conduct, and rejecting the argument “that the lack of a savings clause in the 2003 version of section 3283 is fatal to extending the statute of limitations.”); *United State v. Nader*, 425 F. Supp. 3d 619, 624-30 (E.D. Va. 2019) (holding that the 2003 amendment of Section 3283 applies to pre-enactment conduct).

In *Landgraf v. USI Film Products*, 511 U.S. 244 (1994), the Supreme Court set forth a two-part framework for determining whether a statute applies retroactively. At step one of the analysis, “if Congress ‘expressly prescribed’ that a statute applies retroactively to antecedent conduct, ‘the inquiry ends[] and the court enforces the statute as it is written,’ save for constitutional concerns.” *Weingarten*, 865 F.3d at 54-55 (quoting *In re Enter. Mort. Acceptance Co. Sec. Litig.* (“*Enterprise*”), 391 F.3d 401, 405-06 (2d Cir. 2004)). However, “when a statute ‘is ambiguous or contains no express command’ regarding retroactivity, a reviewing court must determine whether applying the statute to antecedent conduct would create presumptively impermissible retroactive effects.” *Id.* For the reasons set forth below, the 2003 amendment of 18 U.S.C. § 3283 satisfies both steps of *Landgraf*, and should be applied to pre-enactment conduct.

1. The 2003 Amendment Satisfies Step One of *Landgraf*

At step one of the *Landgraf* analysis, the question is whether Congress has “expressly prescribed the statute’s proper reach.” *Landgraf*, 511 U.S. at 280. When evaluating Congress’s intent at step one of the *Landgraf* inquiry, the Second Circuit has considered both the text of the statute and the legislative history. *Enterprise*, 391 F.3d at 406-08. In this case, the amended versions of Section 3283 evince Congress’s express intent to extend the statute of limitations. The text and history of Section 3283 firmly establish that, with each amendment of the statute of limitations, Congress intended to repeal and replace the prior version of the statute and thereby extend the time to bring live charges of child sexual abuse.

The 2003 amendment, like the 1994 version of the statute, specifically states that “[n]o statute of limitations that would otherwise preclude prosecution” of a child sexual offense “shall preclude” prosecution of such offense during the life of the victim. 18 U.S.C. § 3283 (2003). Claims that were live in 2003 were, at the time, subject to the then-existing statute of limitations, which ran until the victims reached the age of 25. Whenever that statute of limitations ran, it would “otherwise preclude prosecution.” Instead, that statute of limitations was replaced by the 2003 amendment.

The Eighth and Ninth Circuits have both held that Congress intended to extend the statute of limitations for live claims of sexual abuse. In *United States v. Jeffries*, 405 F.3d 682 (8th Cir. 2005), the Eighth Circuit reasoned that “both the title and wording of § 3509(k) indicate that Congress intended by it to extend the general statute of limitations. . . . § 3509(k) was later recodified at § 3283 and continued to extend the statute of limitations in child abuse cases.” *Id.* at 684 (citing *United States v. Johns*, 15 F.3d 740, 743 (8th Cir. 1994) (holding that an earlier version of § 3509(k) applied to conduct predating its enactment in 1990)). The Eighth Circuit’s reasoning—which addressed earlier versions of the statute—applies with equal, if not greater,

force to the 2003 amendment, which established an even broader statute of limitations. Following *Jeffries*, the Ninth Circuit has similarly held that Section 3283 applies retroactively, because “Congress evinced a clear intent to extend” the statute of limitations. *Leo Sure Chief*, 438 F.3d at 924 (citing *Jeffries*, 405 F.3d at 685).

Not only does the wording of the statute clearly express that Congress intended for the 2003 amendment to be the only governing statute of limitations for live claims of child sexual abuse, but the legislative history also supports this conclusion. The Joint Report accompanying the 2003 amendment explains that Congress wanted to expand the statute of limitations out of concern that the 1994 amendment did not go far enough to ensure that perpetrators of child sexual abuse were held to account:

While [the statute of limitations allowing for prosecution until the victim reaches age 25] is better than a flat five-year rule [under Section 3282], it remains inadequate in many cases. For example, a person who abducted and raped a child could not be prosecuted beyond this extended limit — even if DNA matching conclusively identified him as the perpetrator one day after the victim turned 25.

H.R. Conf. Rep. No. 108-66, at 54 (2003). Congress’s express intention was to prevent perpetrators of crimes against children from escaping justice based on a timing technicality. Moreover, since the 2003 amendment extended the statute of limitations throughout the lifetime of the victim, it is clear that Congress expressly authorized prosecutions to occur decades after crimes had been committed.¹³

¹³ Although the defendant claims that prosecuting her crimes now presents unique fairness concerns, there is nothing unusual about prosecuting sex crimes long after they have occurred. *See, e.g., United States v. Brown*, 800 F. App’x 455, 461 (9th Cir. 2020) (2014 indictment charging, among other crimes, sex trafficking offenses dating to 2000 and 2001), *cert. denied*, No. 20-5064, -- S. Ct. --, 2021 WL 78235 (Jan. 11, 2021); *United States v. Pierre-Louis*, No. 16 Cr. 541 (CM), 2018 WL 4043140, at *1 (S.D.N.Y. Aug. 9, 2018) (2016 indictment covering conduct going back to 1998); *United State v. Nader*, 425 F. Supp. 3d 619, 622 (E.D. Va. 2019) (2019 indictment for

The defendant argues that Congress did not intend for Section 3283 to apply to pre-enactment conduct, and asserts that the legislative history supports this interpretation. Specifically, the defendant points to an earlier version of the bill, which contained an express retroactivity provision that was not included in the final version of the statute. (Def. Mot. 2 at 6-7). The defendant's argument on this point is both misleading and unpersuasive. The defendant quotes Senator Patrick Leahy's comments on the 2003 conference committee report to the effect that "the conference agreed to drop language from the original House-passed bill that would have extended the limitations period retroactively." (Def. Mot. 2 at 7). This is a selective quotation; the full statement regarding retroactivity is as follows:

A final point on section 202: I am pleased that the conference agreed to drop language from the original House-passed bill that would have extended the limitations period retroactively. That language, *which would have revived the government's authority to prosecute crimes that were previously time-barred*, is of doubtful constitutionality. We are already pushing the constitutional envelope with respect to several of the "virtual porn" provisions in this bill. I am pleased that we are not doing so in section 202 as well.

149 Cong. Rec. S5137, S5147 (Apr. 10, 2003) (statement of Sen. Leahy) (emphasis added). As the full quotation makes clear, the legislative history does *not* support the conclusion that when Congress amended Section 3283, it declined to adopt the language in the House-passed bill because it wanted the lengthened statute of limitations to apply only prospectively. Instead, Senator Leahy's comments indicate that Congress declined to add language that would allow for the resurrection of time-barred prosecutions, in violation of the Ex Post Facto Clause.¹⁴ But that

conduct in 2000). Indeed, that is precisely what Congress authorized when it extended the statute of limitations for such crimes through the lifetime of the victim.

¹⁴ Moreover, the fact that Congress considered, but ultimately omitted, retroactivity language does not end the *Landgraf* inquiry, as the defendant suggests. Indeed, *Landgraf* itself makes this clear. In that case, the statute at issue had a predecessor, which contained a retroactivity provision. That

concern is entirely separate from *extending* the statute of limitations for live claims, which is what Congress did here. Critically—and as discussed in greater detail below—there is no Ex Post Facto Clause issue in this case, because the statute of limitations for Counts One through Four had not yet expired when the limitations period was extended in 2003.¹⁵

Accepting the defendant’s argument would undermine Congress’s plain purpose in extending the limitations period. In 1990, 2003, and 2006, Congress extended—and ultimately abolished—the statute of limitations to ensure that prosecutors could seek justice for child sex abuse victims who come forward or identify their abusers after a delay. Applying the 2003 statute only prospectively subverts that purpose by exempting all past offenders. According to the defendant, in 2003, Congress wanted to ensure that every perpetrator who abused a minor in the future was subject to prosecution for the lifetime of the minor, but Congress simultaneously was

version was vetoed by the President, and the final version of the statute omitted the retroactivity provision. As the Supreme Court explained, “[t]he omission of the elaborate retroactivity provision of the 1990 bill—which was by no means the only source of political controversy over that legislation—is not dispositive because it does not tell us precisely where the compromise was struck in the 1991 Act.” *Landgraf*, 511 U.S. at 256. Indeed, “[i]t [was] entirely possible—indeed, highly probable—that, because it was unable to resolve the retroactivity issue with the clarity of the 1990 legislation, Congress viewed the matter as an open issue to be resolved by the courts.” *Id.* at 261.

¹⁵ Minor Victim-1 and Minor Victim-2 were both younger than 25 in 2003, when Congress extended the limitations period. Minor Victim-3 was not, but this does not alter the inquiry, because the Indictment does not contain any counts that relate to Minor Victim-3 alone. Instead, she is one of multiple victims of the conspiracies charged in Counts One and Three. The inclusion of the overt acts relating to Minor Victim-3 in an otherwise timely conspiracy count does not render that count untimely. To the contrary, for conspiracy counts, the Government is only required to prove that one overt act in furtherance of the conspiracy occurred within the limitations period. *United States v. Ben Zvi*, 242 F.3d 89, 97 (2d Cir. 2001). Thus, the defendant is incorrect to assert that the government is “barred” from prosecuting the defendant for any offense against Minor Victim-3. (Def. Mot. 2 at 10, n.3). Instead, there is no statute of limitations issue here so long as the jury is properly instructed at trial that it must find at least one overt act within the limitations period—*i.e.*, one overt act that does not relate to Minor Victim-3.

content to let all previous perpetrators avoid prosecution whenever their victims turned twenty-five. No such intent is manifest in either the text or in Senator Leahy's statement.

The reach of Section 3283 is clear. Because Congress has expressly extended the statute of limitations to pre-enactment conduct, the Court should resolve its analysis at *Landgraf* step one and apply the statute as Congress intended. In the alternative, however, the statute is—at worst—ambiguous. If the Court takes that view, it should proceed to *Landgraf* step two.

2. The 2003 Amendment Satisfies Step Two of *Landgraf*

If the Court were to determine that the legislative intent behind Section 3283 is ambiguous, the inquiry then extends to the second step of the *Landgraf* analysis, which examines the retroactive effects of the statute. As the Supreme Court explained in *Landgraf*, “[a] statute does not operate ‘retrospectively’ merely because it is applied in a case arising from conduct antedating the statute’s enactment, or upsets expectations based in prior law.” 511 U.S. at 269. Instead, the question is whether the statute “would impair rights a party possessed when he acted, increase a party’s liability for past conduct, or impose new duties with respect to transactions already completed.” *Vernon v. Cassadaga Valley Cent. School Dist.*, 49 F.3d 886, 890 (2d Cir. 1995) (quoting *Landgraf*, 511 U.S. at 280). Applying Section 3283 here would have none of those effects. Maxwell’s rights, liabilities, and duties were governed by the substantive criminal statutes governing her conduct. Until the statute of limitations expired, Maxwell had the same legal liability, the same rights, and the same incentives to retain evidence. A statute extending that period attaches no new legal consequences; rather, it preserves the status quo. Therefore, the statute does not operate “retrospectively” within the meaning of *Landgraf*. See *Cruz v. Maypa*, 773 F.3d 138, 145 (4th Cir. 2014) (“[A]pplying [an] extended limitations period to claims that

were unexpired at the time of its enactment does not give rise to an impermissible retroactive effect under *Landgraf*.”).

The Second Circuit has considered in three cases whether retroactive statutes of limitation are permissible under *Landgraf*. In *Vernon v. Cassadaga Valley Cent. School Dist.*, the Second Circuit held that a new statute shortening the filing period for a civil claim applied retroactively. In reaching that conclusion, the Court noted that “*Landgraf* and other cases countenance treating statutes of limitations differently from statutory provisions that affect substantive rights,” because statutes of limitations regulate secondary, and not primary conduct. *Vernon*, 49 F.3d. at 890-91. In *In re Enterprise Mortgage Acceptance Co.*, 391 F.3d 401 (2d Cir. 2004), the Second Circuit held that applying an extended statute of limitations retroactively created impermissible retroactive effects. Yet in that case, it was critical to the Court’s analysis that—unlike here—the statute revived claims that were previously time-barred. *Id.* at 410 (“In our view, the resurrection of previously time-barred claims has an impermissible retroactive effect.”).

In *Weingarten*, the Second Circuit considered, but did not ultimately reach, the issue of whether Section 3283 applies retroactively.¹⁶ In discussing the second step of *Landgraf*, the Court observed: “Courts have routinely recognized a difference between revoking a vested statute of limitations defense and extending a filing period for live claims.” *Id.* at 57 (collecting cases). Moreover, in an opinion by Judge Learned Hand, the Second Circuit explained why extending an active criminal statute of limitations does not offend any concept of fairness:

Certainly it is one thing to revive a prosecution already dead, and another to give it a longer lease of life. The question turns upon how much violence is done to our instinctive feelings of justice and fair play. For the state to assure a man that he has become safe from its

¹⁶ The First Circuit has similarly considered this issue in the context of an ineffective assistance of counsel claim and declined to reach the issue of whether Section 3283 applies retroactively. *United States v. Miller*, 911 F.3d 638, 644 (1st Cir. 2018).

pursuit, and thereafter to withdraw its assurance, seems to most of us unfair and dishonest. But, while the chase is on, it does not shock us to have it extended beyond the time first set, or, if it does, the stake forgives it.

Falter v. United States, 23 F.2d 420, 425-26 (2d Cir. 1928). The distinction between statutes that revive expired prosecutions and those that extend existing limitations periods has deep roots in established jurisprudence. It is well-settled that the Ex Post Facto Clause prohibits laws that revive time-barred prosecutions, but permits laws that retroactively extend limitations periods. *Stogner v. California*, 539 U.S. 607, 632 (2003) (holding that the Ex Post Facto Clause does not “prevent the State from extending time limits for . . . prosecutions not yet time barred.”); *United States v. Morgan*, 113 F.3d 1230, 1997 WL 268712, at *7 (2d Cir. 1997) (unpublished opinion) (“The long-standing rule in this circuit is that Congress has the power to extend the period of limitations without running afoul of the *ex post facto* clause, provided the original period has not already run.”) (citing *Falter*, 23 F.3d at 425-26). And other circuits have emphasized this distinction in the context of Section 3283. *Leo Sure Chief*, 438 F.3d, at 922-25; *Jeffries*, 405 F.3d 685.

Read together, the Second Circuit’s decisions in *Weingarten*, *Vernon*, *Enterprise*, and *Falter* establish that Congress may retroactively extend the limitations period for still-viable prosecutions. That is precisely what has occurred here, because the charges in the Indictment were still timely when the 2003 amendment extended the limitations period. As a result, applying Section 3283 in this case does not create impermissible retroactive effects. Therefore, step two of *Landgraf* is satisfied, and Section 3283 applies retroactively.

Resisting this conclusion, the defendant asserts that, in the criminal context, *Landgraf*’s second step provides protections beyond the Ex Post Facto Clause. But that is not the law. See *Nader*, 425 F. Supp. 3d at 630 (rejecting the argument that “there is ‘daylight’ between the Ex Post Facto Clause and *Landgraf*’s second step.”). Maxwell cites no precedent for the proposition that,

in the criminal context, much less in the context of criminal statutes of limitations, *Landgraf* forecloses prosecutions permitted by the Constitution. Maxwell instead cites dictum by a single judge in a non-criminal case that, “[i]f [he] were judging on a clean slate,” he would read *Landgraf* to prohibit some retroactive application of statutes that, “while not the equivalent of criminal *ex post facto*, nevertheless would run afoul of” *Landgraf*’s considerations, and that he “expect[ed] that the Supreme Court’s future decisions” would confirm such a reading. *Thom v. Ashcroft*, 369 F.3d 158, 163 n.6 (2d Cir. 2004) (Calabresi, J., “[s]peaking only for [him]self”). That footnote is too slender a reed to support Maxwell’s entire motion to dismiss the Indictment as untimely. Moreover, Maxwell has identified no case in the intervening seventeen years in which the Supreme Court has embraced Judge Calabresi’s view. See *Nader*, 425 F. Supp. 3d at 631 (finding arguments relating to Judge Calabresi’s footnote unpersuasive, and concluding that Section 3283 applies retroactively under *Landgraf*). As *Weingarten* recognized, any court to hold that “retroactively extending a filing period for live charges is a presumptively impermissible retroactive effect under *Landgraf*” will be the first to do so. 865 F.3d at 58.

The defendant also argues that “criminal limitations statutes are to be liberally interpreted in favor of repose,” relying on the Supreme Court’s decision in *Toussie v. United States*, 397 U.S. 112, 115 (1970). *Toussie* considered whether a person’s failure to register for the draft was a continuing offense subjecting him to prosecution eight years later, notwithstanding the five-year limitations period in Section 3282. *Id.* at 114. In that context, the Court invoked a presumption in favor of repose when determining whether the underlying conduct was time-barred. But that presumption says nothing about whether Congress intended an extension of a statute of limitations to apply purely prospectively, a question governed by *Landgraf*. Only one case has applied *Toussie* to the *Landgraf* analysis, see *United States v. Gentile*, 235 F. Supp. 3d 649, 655 (D.N.J.

2017), and that case, which did not concern Section 3283, relied extensively on a pre-*Landgraf* opinion requiring a clear statement of congressional intent in favor of retroactivity. *See id.* at 655 (citing *United States v. Richardson*, 512 F.2d 105 (3d Cir. 1975)). That clear-statement rule is inconsistent with the analysis required by *Landgraf* step two. *See Nader*, 425 F. Supp. 3d at 631 (rejecting an identical argument relying on *Toussie* and *Gentile*).

The defendant asks this Court to break new ground and become the first court to hold that Section 3283 applies only prospectively. The Court should reject this invitation. For the reasons set forth above, the weight of authority holds that Section 3283 applies retroactively, in keeping with Congress's express intent to expand prosecutions of individuals who sexually exploit children. The Indictment is timely, and the motion should be denied.

C. The Defendant's Crimes Involved the Sexual Abuse of Minors

The defendant next argues that Section 3283 does not apply at all, and she asks the Court to conclude that the crimes of sexual abuse alleged in the Indictment did not involve sexual abuse. Her argument runs contrary to both the case law and common sense. Her motion is meritless and should be denied.

By its terms, Section 3283 applies to any "offense involving the sexual or physical abuse, or kidnaping, of a child under the age of 18 years." 18 U.S.C. § 3283. As discussed above, when the statute was first enacted, it was located at 18 U.S.C. § 3509(k). The definition of the term "sexual abuse" is located in a neighboring provision within that same section:

For purposes of this section . . . the term 'sexual abuse' includes the employment, use, persuasion, inducement, enticement, or coercion of a child to engage in, or assist another person to engage in, sexually explicit conduct or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children.

18 U.S.C. § 3509(a)(8). The term “sexually explicit conduct” is in turn defined to mean, among other things, “sexual intercourse, including sexual contact”; and the term “sexual contact” means “the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify sexual desire of any person.” *Id.* § 3509(a)(9)(A). Courts have looked to the definition of “sexual abuse” set forth in Section 3509(a) to determine whether the statute of limitations of Section 3283 applies to an offense. *United States v. Carpenter*, 680 F.3d 1101, 1103-04 (9th Cir. 2012) (“We join our sister circuits in looking to subsection 3509(a) for a definition of ‘sexual abuse’ under federal law, and find it the appropriate definition to use in applying section 3283’s extended statute of limitations.”); *United States v. Vickers*, No. 13 Cr. 128 (RJA) (HKS), 2014 WL 1838255, at *10 (W.D.N.Y. May 8, 2014) (applying the definition of “sexual abuse” set forth in Section 3509(a)).

As is evident from its plain text, the definition of “sexual abuse” set forth in Section 3509(a) includes not only actual “sexual contact,” but also the “the employment, use, persuasion, inducement, enticement, or coercion of a child to engage in, or assist another person to engage in,” sexual contact. 18 U.S.C. § 3509(a). The breadth of this definition is underscored by Congress’s use of the word “includes.” The Supreme Court has held that Congress’s choice of the word “includes” is “significant because it “makes clear that the examples enumerated in the text are intended to be illustrative, not exhaustive.” *Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142, 162 (2012) (citing *Burgess v. United States*, 552 U.S. 124, 131 n.3 (2008)). Thus, sexual abuse “as defined here encompasses a wider set of behavior than just rape or other unwanted sexual touching.” *United States v. Schneider*, 801 F.3d 186, 197 (3d Cir. 2015). In keeping with that broad definition, courts have held that Section 3283 “does not require that an offense consist of a

sexual act between a defendant and a specific child,” *Vickers*, 2014 WL 1838255, at *11, but instead reaches offenses involving the transportation of minors to engage in illegal sexual activity. See *Sensi*, 2010 WL 2351484, at *2-3 (collecting cases interpreting the term “sexual abuse” to encompass “all crimes that would logically relate to the common understanding of sexual abuse even when found in chapters 110 (‘Sexual Exploitation and Other Abuse of Children’) and 117 (‘Transportation of Illegal Sexual Activity and Related Crimes’) of title 18”); *Schneider*, 801 F.3d at 196-97 (holding that Section 3283 applied to defendant convicted of traveling with the purpose of engaging in sex with a minor victim, in violation of 18 U.S.C. § 2423(b)); *Vickers*, 2014 WL 1838255, at *11-12 (holding that violations of 18 U.S.C. § 2423(a) were crimes involving sexual abuse under Section 3283).

The defendant’s motion does not engage with these authorities at all. Instead, the defendant asks the Court to apply an “essential ingredients” test, relying heavily upon the Supreme Court’s decision in *Bridges v. United States*, 346 U.S. 209 (1953), which concerned the Wartime Suspension of Limitations Act (“WSLA”). (Def. Mot. 2 at 12-14). But *Bridges* is inapposite, since it concerned a statute “[t]he legislative history of [which] emphasize[d] the propriety of its conservative interpretation” and “indicate[d] a purpose to suspend the general statute of limitations only as to” certain narrowly defined offenses. *Bridges*, 346 U.S. at 216. There is no corresponding indication that Congress intended the “essential ingredients” test to apply to Section 3283. As the Third Circuit has explained in rejecting an identical argument:

While *Bridges* did adopt an “essential ingredient” test, the limitations-extending statute at issue was a narrowly drafted exception specifically intended to target frauds related to war procurement. Unlike the WSLA, § 3283 has no such restrictive language or legislative history suggesting congressional intent to limit its application to a specific subset of circumstances. Congress, rather, has evinced a general intention to “cast a wide net to ensnare as many offenses against children as possible.”

Schneider, 801 F.3d at 197 (quoting *United States v. Dodge*, 597 F.3d 1347, 1355 (11th Cir. 2010) (en banc)); see *Weingarten*, 865 F.3d at 59 n.10 (distinguishing *Bridges* because the “essential ingredient” test there “effectuated Congress’s specific intent to limit the WSLA’s extended limitations period to only a few offenses,” while “Congress had the opposite intention for Section 3283”); see also *Vickers*, 2014 WL 1838255, at *11-12 (“[T]he defendant argues that the charged offense does not “involve” the sexual abuse of a child, as reflected in the elements of the offense. Defendant’s argument is illogical and clearly misinterprets the use of the term ‘involving’ in section 3283.”).

Although the Second Circuit has not yet reached this issue, it examined this question in *Weingarten v. United States*, in the context of a claim for ineffective assistance of counsel. *Weingarten*, 865 F.3d at 58-60. Rejecting the claim, the Second Circuit observed that none of the criteria for applying the categorical approach are met in the context of Section 3283. *Id.* The categorical approach—which focuses on the elements of the offense—is generally only used in settings like sentencing and immigration, where a court is asked to evaluate the conduct from a prior conviction. *Id.* at 59. In such a context, a court attempting to examine the facts of the prior conviction to determine the present punishment or immigration consequences would encounter logistical and constitutional obstacles. *Id.* (noting an *Apprendi* problem and “daunting practical difficulties and potential unfairness”). None of those concerns is present here, where the relevant facts will be proved at trial.

The *Weingarten* court also specifically rejected the argument Maxwell now asserts: that the words “offense involving” require a categorical approach. “[T]hat Congress used the word ‘involving’ in § 3283 does not necessarily mean it intended to trigger the categorical approach. ‘Involving’ . . . is equally consistent with applying a fact-based approach.” 865 F.3d at 60 n.11

(citing *Nijhawan v. Holder*, 557 U.S. 29, 38 (2009) (applying the circumstances-specific approach to a statute containing the word “involves”)). Moreover, as the *Weingarten* court observed, the Supreme Court has applied the categorical approach to statutes containing the word “involving” where the statutes at issue also referenced “elements” of offenses, or specific prior “convictions,” in a manner that referred to specific convictions, as opposed to particular offense conduct. 865 F.3d at 59 (citing *Taylor v. United States*, 495 U.S. 575 (1990); *Leocal v. Ashcroft*, 543 U.S. 1 (2004)). By contrast, the phrase “sexual abuse” in Section 3283 refers to specific conduct, and not the statutory offenses charged in the Indictment.

In *Weingarten*, the Second Circuit further noted that applying the categorical approach to Section 3283 would run contrary to Congress’s intention to “cast a wide net to ensnare as many offenses against children as possible.” 865 F.3d at 60 (quoting *Schneider*, 801 F.3d at 196). On this point, it bears emphasizing that the interpretation the defendant advances would lead to absurd outcomes, as many federal crimes involving the sexual abuse of minors do not contain, as an element, a requirement that the defendant commit a sex act with a minor. It would run contrary to Congress’s intent to interpret Section 3283 in a manner that would exclude many—if not most—sexual offenses against children.

The lone Section 3283 case the defendant cites, *United States v. Countentos*, 651 F.3d 809 (8th Cir. 2011), is easily distinguishable on its facts. In that case, the Eighth Circuit considered, among other issues, whether the crime of possessing child pornography involved sexual abuse within the meaning of Section 3283. *Id.* at 816-18. In analyzing that question, the court discussed, among a variety of factors, the elements of the crime. But it did not consider the categorical approach, or purport to apply an “essential ingredients” test, as the defendant implies. Instead, the court resolved the issue by answering a common sense question: “Does someone who merely

possesses child pornography sexually abuse the child portrayed in the images?” *Id.* at 817. This inquiry has no relevance here, as this case does not involve the possession of child pornography.

The crimes charged in the Indictment plainly involved the sexual abuse of minors. First, the Indictment clearly alleges that the minor victims were subjected to actual, physical sexual contact as part of the defendant’s crimes. *See* Indictment at ¶¶ 4 (alleging that conduct toward minor victims involved sexual abuse), 5 (alleging that “Epstein’s resulting abuse of minor victims included, among other things, touching a victim’s breast, touching a victim’s genitals, placing a sex toy such as a vibrator on a victim’s genitals, directing a victim to touch Epstein while he masturbated, and directing a victim to touch Epstein’s genitals.”), 7 (describing patterns of sexual abuse). Moreover, the Indictment alleges that the defendant persuaded, induced, enticed, and transported minors for purposes of engaging in criminal sexual activity, and that she conspired to do the same. As discussed above, the offenses charged in the Indictment accordingly involved the sexual abuse of minors as defined in Section 3509(a) and incorporated into Section 3283.

Because the defendant’s crimes involved sexual abuse, the expanded statute of limitations set forth in Section 3283 applies to the crimes charged in Counts One through Four of the Indictment and her motion should be denied.

III. The Defendant’s Motion to Dismiss the Indictment Based on Alleged Improper Pre-Trial Delay Should Be Denied

The defendant contends that the Indictment should be dismissed because the Government’s delay in bringing the charges violates the Due Process Clause of the Fifth Amendment. (Def. Mot. 7). The defendant has not and cannot successfully establish such a violation. First, the defendant has not established that any alleged pre-indictment delay caused actual prejudice to the defense. Her speculative assertions about lost witnesses and records are hardly the sort of evidence that she can use to carry her heavy burden. Without proof of actual prejudice, the motion fails. Second,

even if the Court finds actual prejudice to the defense, the defendant has not established that the Government's purpose in any alleged pre-indictment delay was improper or designed to gain any sort of tactical advantage. The Government obtained an indictment charging the defendant on June 29, 2020, less than two years after opening its investigation and less than a year after victims with information critical to the pending charges came forward. The defendant thus cannot establish an undue delay, much less a delay caused by the Government for an improper purpose.

Because the defendant cannot establish either element, let alone both, her due process claim is meritless and should be denied.

A. The Defendant Has Failed to Demonstrate Actual and Substantial Prejudice

1. Applicable Law

It is well-settled that the statute of limitations is “the primary guarantee against bringing overly stale criminal charges.” *United States v. Marion*, 404 U.S. 307, 322 (1971) (internal quotation marks and citations omitted). Thus, when a case has been brought within the statute of limitations, it is “only rarely dismissed,” and carries a “strong presumption of validity.” *United States v. Cornielle*, 171 F.3d 748, 752 (2d Cir. 1999); *see also United States v. Lawson*, 683 F.2d 688, 694 (2d Cir. 1982).

The Second Circuit standard for pre-indictment delay is clear, and it imposes a heavy burden on the defendant to show that: (i) “he suffered actual prejudice because of the alleged pre-indictment delay,” and (ii) “that such delay was a course intentionally pursued by the government for an improper purpose.” *Cornielle*, 171 F.3d at 752 (citations omitted). The burden for proving both prongs of the standard rests squarely on the defendant. *United States v. Scarpa*, 913 F.3d 993, 1014 (2d Cir. 1990); *United States v. Rubin*, 609 F.2d 51, 66 (2d Cir. 1979); *United States v. Ricco*, 549 F.2d 264, 272 (2d Cir. 1977). The burden is so heavy that it is rarely met by a defendant.

See DeMichele v. Greenburgh Centr. Sch. Dist. No. 7, 167 F.3d 784, 790-91 (2d Cir. 1999) (“[W]hile the [Supreme] Court may not have shut the door firmly on a contention that at some point the Due Process Clause forecloses prosecution of a claim because it is too old, at most the door is barely ajar.”).

Substantial prejudice is just that—substantial, actual, non-speculative prejudice. *See United States v. Birney*, 686 F.2d 102, 105-06 (2d Cir. 1982) (a defendant’s “proof of prejudice must be definite and not speculative”); *see also United States v. Henderson*, 337 F.3d 914, 920 (7th Cir. 2003) (prejudice sufficient to warrant dismissal for pre-indictment delay must be “actual and substantial” and “specific, concrete, and supported by evidence”). Prejudice in this context refers to “actual prejudice to the defendant’s right to a fair trial.” *United States v. Elsbery*, 602 F.2d 1054, 1059 (2d Cir. 1979). The mere loss of witnesses or evidence, without more, is insufficient. Claims of loss of memory resulting from the passage of time have been held to be insufficient to warrant dismissal of an indictment on due process grounds. *See United States v. Wright*, 343 F.3d 849, 860 (6th Cir. 2003); *Henderson*, 337 F.3d at 919-20. Moreover, even when a claim of prejudice is based upon the complete loss of a witness’s testimony or other evidence, a defendant nevertheless must show how that testimony or evidence would have affected the outcome or otherwise have assisted the case. *See United States v. Gilbert*, 266 F.3d 1180, 1187 (9th Cir. 2001) (defendant’s pre-indictment delay claim rejected due to failure to show “how the testimony from [three absent] witnesses would have benefitted his case”); *United States v. Spears*, 159 F.3d 1081, 1085 (7th Cir. 1999) (“[A] defendant must do more than show that a particular witness is unavailable and that the witness’ testimony would have helped the defense. He must also show that the witness would have testified, withstood cross-examination, and that the jury would have found the witness credible” (citations omitted)). “Courts have held that ‘the defendant

also has the burden of showing that the lost testimony or information was not available through other means.” *Pierre-Louis*, 2018 WL 4043140, at *4 (quoting *United States v. Sprouts*, 282 F.3d 1037, 1041 (8th Cir. 2002)).

The vast majority of pre-indictment delay cases fail on the first prong. *See, e.g., Marion*, 404 U.S. at 324-25 (fading witness memories insufficient; “no one suggests that every delay-caused detriment to a defendant’s case should abort a criminal prosecution”); *United States v. Snyder*, 668 F.2d 686, 689 (2d Cir. 1982) (death of a defense witness three years before indictment insufficient prejudice); *United States v. Iannelli*, 461 F.2d 483, 485 (2d Cir. 1972) (unavailability of witnesses insufficient prejudice); *United States v. King*, 560 F.2d 122, 130-31 (2d Cir. 1977) (death of witness and missing documents insufficient prejudice); *Pierre-Louis*, 2018 WL 4043140, at *4-5 (death of a defense witness and defendant’s own memory issues insufficient prejudice).

2. Discussion

The defendant points to at least four ways in which she claims the passage of time prejudiced her defense, but none of her hypothetical claims of prejudice withstand scrutiny. In particular, she contends that, as a result of the passage of time, four witnesses have died, unnamed Epstein employees have been “lost,” unspecified witnesses now have “failed or corrupted” memories, and records have been lost or destroyed. She further contends that these collectively demonstrate actual prejudice. (Def. Mot. 7 at 8-14). None has merit, individually or collectively.

With respect to the first three arguments, the fact that certain witnesses cannot testify because of their deaths or failed memories does not compel a finding of actual prejudice. “Faded memories or unavailable witnesses are inherent in any delay, even if justifiable. To merit dismissal a defendant must demonstrate a substantial, actual prejudice to his ability to defend himself.”

United States v. Long, 697 F. Supp. 651, 657 (S.D.N.Y. 1988). The defendant has not made such a showing. Her speculative assertions simply do not rise to that level.

The defendant first claims she has suffered substantial prejudice as a result of pre-indictment delay due to the unavailability of Jeffrey Epstein, Epstein's mother, Michael Casey (the alleged agent of Minor Victim-1), and Palm Beach Police Department Detective Joseph Recarey. She contends that the loss of Epstein demonstrates actual prejudice because Epstein "would have" testified that the defendant did not engage in the criminal activity with which she is charged. (Def. Mot. 7 at 8). That assertion is speculative at best, and the law is clear that "proof of prejudice must be definite and not speculative." *Birney*, 686 F.2d at 105-06; *see also Long*, 697 F. Supp. at 657 (finding that "perceived prejudice is speculative" where there was "no way of knowing what [the unavailable witness's] testimony would have been"). To credit Maxwell's argument is to assume that Epstein, after being indicted with federal sex trafficking charges, would have taken the stand, would not have invoked his Fifth Amendment rights, and would have provided testimony that exculpated Maxwell, which a jury would have credited in the face of contradictory trial evidence. This is an exercise in chain upon chain of conjecture that comes nowhere close to meeting the burden of demonstrating actual prejudice. *See Spears*, 159 F.3d at 1085 ("[A] defendant must do more than show that a particular witness is unavailable and that the witness' testimony would have helped the defense. He must also show that the witness would have testified, withstood cross-examination, and that the jury would have found the witness credible." (citations omitted)); *see also United States v. Valona*, 834 F.2d 1334, 1339 (7th Cir. 1987) (noting that prejudice analysis must consider whether the missing witness "would have withstood cross-examination," whether the jury would have found him a "credible witness," and whether the testimony, when compared to other trial evidence "would affect the trial outcome" (internal quotation marks and citations

omitted)). The defendant has not and cannot establish that Epstein would have been available to testify in the first instance, much less that he would have voluntarily agreed to testify at her trial in a way that would help, rather than hurt, the defendant.

As to Epstein's mother, who died in April 2004, the defendant contends that she "would have testified that she did not observe Ms. Maxwell with any Accusers between 1994 and 1997." (Def. Mot. 7 at 9). "Counsel's unsworn assertions as to vague generalities" that witnesses, "if alive, would give testimony helpful to [the defendant] do not show that [the defendant's] ability to present a defense has been substantially and actually prejudiced." *United States v. Scala*, 388 F. Supp. 2d 396, 399-400 (S.D.N.Y. 2005). Here, "there is no evidence before the Court as to what [the deceased witness] would have testified, much less specific evidence of how losing that testimony has caused [the defendant] actual prejudice." *Id.* at 400. Further, unless Epstein's mother was with the defendant "every moment" between 1994 and 1997, "it would be impossible for [her] to testify that [the] defendant did not commit the charged crimes, so whatever helpful testimony [she] might have offered (the details of which are sparse in the motion) would be easily undermined on cross-examination." *Pierre-Louis*, 2018 WL 4043140, at *4 (citing *Spears*, 159 F.3d at 1081-1085). Moreover, Epstein's mother died "sufficiently prior to 'any realistic trial date,' to make it improbable that any prejudice it may have caused [the defendant] was the result of government delay." *United States v. Cheung Kin Ping*, 555 F.2d 1069, 1073 (2d Cir. 1977) (quoting *United States v. Stein*, 456 F.2d 844, 848 (2d Cir. 1972)). Indeed, Epstein's mother passed away before the Palm Beach Police Department even began investigating Epstein in 2005. (Def. Mot. 7, Ex. D at i).

The defendant's claims relating to Michael Casey and Detective Recarey fare no better. She again speculates that Casey and Detective Recarey, who passed away in August 2017 and May

2018 respectively, would have testified, and that such testimony would have been exculpatory and would have materially helped the defense. (Def. Mot. 7 at 9-11). The defendant cannot establish that Casey and Detective Recarey would have testified in a way that would help, rather than hurt, the defendant.

In particular, the defendant contends that Michael Casey, the purported agent of Minor Victim-1, “would be able to testify” about Minor Victim-1’s behavior during the “relevant time period” and the “lack of any ‘outcry’ or ‘grooming.’” (*Id.* at 10). The defense suggests that Casey not having related any complaints about Maxwell to “any authority, Ms. Maxwell, or any other known witness” means that he knew of no complaints. (*Id.* at 9-10). As an initial matter, “there is no evidence before the Court as to what [Casey] would have testified.” *Scala*, 388 F. Supp. 2d at 400. Even assuming that Casey would have testified as the defendant now contends, such testimony (which would be purely speculative and unsubstantiated) would also have no bearing on whether the abuse, in fact, occurred.

The defendant argues that Detective Recarey would have testified that none of the witnesses with whom he spoke in connection with a prior investigation told him about the defendant participating in sex trafficking activities. (Def. Mot. 7 at 10-11). As a threshold matter, the defendant has not established how such testimony, which would consist entirely of hearsay, could even be admissible at the defendant’s trial. Moreover, the fact that Epstein may have abused victims without the defendant’s participation is not exculpatory as to charges alleging the defendant assisted in the grooming and abuse of *other* victims. The well-established law of this Circuit generally precludes a defendant from offering evidence that a defendant did *not* participate in criminal conduct on a particular occasion—or of her law-abiding conduct during uncharged periods or uncharged events—to rebut the Government’s evidence with respect to the charged

crimes or events. *See, e.g., United States v. Scarpa*, 897 F.2d 63, 70 (2d Cir. 1990) (“A defendant may not seek to establish h[er] innocence . . . through proof of the absence of criminal acts on specific occasions.”); *United States v. Chambers*, 800 F. App’x 43, 46 (2d Cir. 2020) (“A single occurrence of lawful conduct is ‘simply irrelevant’ to other occurrences of lawful conduct.” (quoting *United States v. Walker*, 191 F.3d 326, 336 (2d Cir. 1999))); *United States v. Williams*, 205 F.3d 23, 34 (2d Cir. 2000) (“We reject Williams’s assertion that the evidence of innocent travel was necessary to rebut the government’s allegation that Williams had been involved in other cocaine importations from Jamaica. Although the government did argue that Williams had been involved in other importations, it did not allege that Williams had engaged in drug activity during these particular trips.”); *United States v. Fiumano*, No. 14 Cr. 518 (JFK), 2016 WL 1629356, at *7 (S.D.N.Y. Apr. 25, 2016) (“The principle is rather elementary. A defendant charged with robbing a bank in Manhattan on April 22 cannot offer as evidence to disprove the charged crime that he did not rob the bank’s branches in Brooklyn or the Bronx on April 22 or that he did not rob the Manhattan branch on April 20, 21, 23, and 24, because this evidence is irrelevant to the charge that he robbed the Manhattan bank on April 22.”); *United States v. Gambino*, 838 F. Supp. 744, 748 (S.D.N.Y. 1993).

Inadmissibility aside, the Indictment specifically charges conduct between 1994 and 1997. That a different investigative team focused on Epstein’s conduct in the early 2000s may not have uncovered evidence about the defendant’s conduct in the 1990s has no bearing on the charges in this case, which was brought entirely independent of the prior SDFL investigation. Moreover, and as detailed further below, two of the victims referenced in the Indictment, Minor Victim-1 and Minor Victim-3, were never interviewed by the USAO-SDFL, and had never spoken to law enforcement until they met with this Office in late August and September 2019, after Epstein’s

death.¹⁷ As such, it is neither surprising nor terribly probative of any issue in dispute in this case that Detective Recarey might have testified to a lack of knowledge as to what the victims identified in this Indictment have told the USAO-SDNY. In sum, the defendant has not put “specific evidence” before this Court demonstrating that the loss of Detective Recarey’s testimony, even if admissible, has caused her actual prejudice. *Scala*, 388 F. Supp. 2d at 400.

The defendant next contends that had the Government brought the charges earlier, she would have interviewed and subpoenaed as witnesses “the many Epstein employees that were present at the different locations during that three-year period.” (Def. Mot. 7 at 11). She does not specify which employees she would have called as witnesses, the grounds for contending they are “lost” or “missing,” whether they would have been willing to testify, or what admissible evidence they would have provided. She merely speculates that the evidence could have helped her defense. This is far from the definite proof of prejudice required to state a due process claim. *See United States v. Greer*, 956 F. Supp. 525, 528 (D. Vt. 1997) (“In the context of unavailable witnesses, the defendant must offer some grounds for his belief that the absent witness would have helped his case in a material way.” (internal quotation marks and citation omitted)).

The defendant also argues that “[m]any potential witnesses have been contacted in relation to this matter and other related litigations,” noting that “[s]ignificant numbers of potential witnesses no longer remember when events may have occurred” or “who was present.” (Def. Mot. 7 at 12). Dimming or fading memories over the passage of time are not in themselves sufficient to “demonstrate that [defendants] cannot receive a fair trial” or “justify the dismissal of the indictment.” *Marion*, 404 U.S. at 326; *Elsbery*, 602 F.2d at 1059. Indeed, the fact that the defense described the witnesses as “potential witnesses” suggests that she might still call them. Further,

¹⁷ The third victim, Minor Victim-2, was interviewed previously by the FBI. The Government is not aware of Detective Recarey having participated in an interview of Minor Victim-2.

to the extent the passage of time affects the memories of witnesses who testify at trial, the defendant will have an opportunity to cross-examine such witnesses. *See United States v. Harrison*, 764 F. Supp. 29, 32 (S.D.N.Y. 1991) (noting that “the passage of time does affect witnesses’ memories and it may be relevant to the credibility of their testimony” and that the Government also faces potential harms from the passage of time).¹⁸ Accordingly, the defendant’s bald assertions regarding diminished memories of potential witnesses are speculative and, thus, fall short of the proof of actual prejudice required by the Supreme Court’s standard in *Marion*.

The defendant also claims that because of the delay in the prosecution, she does not have access to certain exculpatory documentary evidence. (Def. Mot. 7 at 12-14). Once again, this argument is entirely speculative. The defendant hypothesizes that if she had access to certain documentary evidence (some of which, such as travel records, has been produced in discovery), or evidence which she herself should have access to (*e.g.*, her own emails from 1994 to 1997, her own phone records from 1994 to 1997, and her own travel records from 1994 to 1997), this evidence would have helped her. She offers no proof or basis for concluding that the records would be helpful. Even if such records were helpful, dismissal of the Indictment would be too extreme a measure in light of the relative significance of this form of evidence to other proof in the case. Thus, the defendant’s claim that she no longer has access to certain evidence is not a proper basis to dismiss the Indictment. *See United States v. Dornau*, 356 F. Supp. 1091, 1094 (S.D.N.Y. 1973) (“A bare allegation that records have been lost or destroyed, which might relate

¹⁸ The Government notes that it faces the same potential harms from the passage of time as does any party, including loss of witnesses through death or disappearance, diminishment of memories over the passage of time, and loss of evidence. The Government, of course, bears the burden of proof at trial, and as such, prosecutors have every incentive to bring cases as promptly as possible, when memories are fresh and when it is possible to identify corroborating witnesses and records. Any suggestion that the Government delayed bringing the instant case for over two decades for its own benefit or a tactical advantage borders on the absurd.

to the instant prosecution, is insufficient to show actual prejudice. . . . The fact that evidence may be lost or destroyed during the pre-indictment stage is inherent in any delay, no matter what the duration. Furthermore, there has been no allegation in this case that the destruction of the records was deliberate on the part of either the government or trustee.” (internal citations omitted)).

Lastly, the defendant contends that prejudicial media reporting and inappropriate pre-trial publicity from at least 2011 through the present has resulted in prejudice to the defendant. (Def. Mot. at 14). She claims that had the Government brought charges against her between 1996 and 2011, the Government “would have not prevailed,” noting that the defendant’s accusers would not have been “able to conform their ‘memories’ to the often republished ‘obvious lies.’” (*Id.* at 15). This argument, like the others contained in this motion, is steeped in speculation. The defendant cites not one case in support of her argument that pre-trial publicity can ever establish actual prejudice, nor does she point to any evidence that the Government fomented such publicity dating back to 2011. To the extent the defendant is concerned about pretrial publicity, she will have the opportunity to propose an appropriate examination of potential jurors during *voir dire* to identify a panel of impartial jurors who have not been prejudiced by any publicity this case may have garnered.

In short, the defendant’s complaints are nothing more than the type of self-serving, vague, speculative, and conclusory claims of prejudice that courts have consistently rejected as insufficient to warrant dismissal of charges based upon pre-indictment delay.¹⁹ The motion should therefore be denied.

¹⁹ The defendant also complains about the Government’s failure to “provide discovery adequate to fully investigate the extent of the prejudice to Ms. Maxwell.” (Def. Mot. 7 at 7). Among the items the defense complains about not receiving in discovery are the names and dates of birth of the Minor Victims, the specific location of any overt act, the date of any overt act, any witness statements, or any corroboration of any allegation in the Indictment. (*Id.*). As described herein, *see* Section X, *infra*, the Government has made substantial discovery productions pursuant to Rule

B. The Defendant Has Failed to Establish That the Government Delayed the Indictment for An Improper Purpose

1. Applicable Law

If, and only if, a defendant has established significant, actual prejudice does the inquiry turn to the reason for the delay.²⁰ See, e.g., *Pierre-Louis*, 2018 WL 4043140, at *5 (“Because Defendant failed to show prejudice, the Court need not even address the second prong.”). The reason for delay violates due process only if it is so extreme that it departs from fundamental notions of “fair play.” *United States v. Lovasco*, 431 U.S. 783, 795 (1977). The Supreme Court has “defined the category of infractions that violate ‘fundamental fairness’ very narrowly,” *Dowling v. United States*, 493 U.S. 342, 352 (1990), and the Supreme Court has “stressed the importance for constitutional purposes of good or bad faith on the part of the Government when the claim is based on loss of evidence attributable to the Government,” *Arizona v. Youngblood*, 488 U.S. 51, 57 (1988).

16 of the Federal Rules of Criminal Procedure, which provides ample information about the charged crimes and the victims referenced in the Indictment. Additionally, many of the defendant’s requests fall within the scope of the Government’s *Giglio* and Jencks Act obligations, which the Government intends to produce at the appropriate stage in the litigation, well in advance of trial.

²⁰ The defendant invites the Court to engage in a balancing test that weighs the prejudice to the defendant against the Government’s reasons for delay. (Def. Mot. 7 at 5, 6 n.4). This Court should reject the defendant’s invitation. The defendant cites *United States v. Brand*, 556 F.2d 1312, 1317 n.7 (5th Cir. 1977), for the proposition that a showing of prejudice triggers such balancing. (Def. Mot. 7 at 5). However, the Fifth Circuit subsequently rejected such a balancing test, finding that the “*Brand* footnote is pure dicta” and instead requiring that defendants demonstrate that the prosecution intentionally caused the delay to gain a tactical advantage over the defendant or “for some other bad faith purpose.” *United States v. Crouch*, 84 F.3d 1497, 1509, 1512 (5th Cir. 1996). The defendant also cites that several Circuit courts, namely the Fourth, Seventh, and Ninth Circuits, require such a balancing test. (Def. Mot. 7 at 6 n.4). The Second Circuit, however, “has not adopted any balancing test, as the Fourth, Seventh and Ninth Circuits have, and its jurisprudence suggests that it would not do so.” *United States v. Santiago*, 987 F. Supp. 2d 465, 490 (S.D.N.Y. 2013). Several other Circuits have also “refused to adopt a balancing test.” *Id.* (collecting cases). This Court should follow that example.

The Second Circuit has clearly held that a defendant seeking the dismissal of an indictment filed within the statute of limitations must establish that the Government acted intentionally, deliberately, or with some strategy, and that the Government used that delay to gain a tactical advantage over the defendant. *See, e.g., Cornielle*, 171 F.3d at 752 (delay must be “intentional device to gain [a] tactical advantage over the accused”); *see also United States v. Alameh*, 341 F.3d 167, 176 (2d Cir. 2003) (“To show unjustifiable conduct, a defendant must demonstrate that the government has intentionally used delay to gain unfair tactical advantage.”); *see also United States v. Delacruz*, 970 F. Supp. 2d 199, 203 (S.D.N.Y. 2013) (“Delacruz’s motion to dismiss would nevertheless fail for the independent reason that he has not made any showing that the preindictment delay was an intentional device designed by the Government to gain a tactical advantage.”); *United States v. Martinez*, No. 94 Cr. 219 (RPP), 1995 WL 10849, at *4 (S.D.N.Y. Jan. 12, 1995) (“In order to establish improper delay by the Government in filing an indictment, a defendant must show that the delay was the result of an intentional device of the Government to gain tactical advantage over the accused.” (internal quotation marks and alterations omitted) (citing *United States v. Hoo*, 825 F.2d 667, 671 (2d Cir. 1987))). Indeed, some version of the phrase “deliberate device” and “tactical advantage” is found in nearly every Second Circuit decision on the issue. *See, e.g., Alameh*, 341 F.3d at 176 (“intentionally used delay to gain unfair tactical advantage”); *Cornielle*, 171 F.3d at 752 (requiring “intentional device” to gain “tactical advantage”); *Lawson*, 683 F.2d at 694 (delay not “engineered by the government for an improper purpose, such as gaining a tactical advantage”); *Snyder*, 668 F.2d at 689; *United States v. Watson*, 599 F.2d 1149, 1157 n.5 (2d Cir. 1979); *United States v. Tanu*, 589 F.2d 82, 89 (2d Cir. 1978); *United States v. Laurenti*, 581 F.2d 37, 40 n.11 (2d Cir. 1978); *United States v. Hillegas*, 578 F.2d 453, 460 (2d Cir. 1978).

2. Discussion

Even if the defendant could establish any actual prejudice—which she cannot—such prejudice would be “necessary but not sufficient” to establish a due process claim. *Lovasco*, 431 U.S. at 790. The defendant’s motion fails because she has not demonstrated the other necessary element to prevail: that the claimed delay by the Government was intentional and deliberate to gain a strategic advantage. Here, as in *Lovasco*, any pre-indictment delay was the result of the Government’s continuing investigation of the case. The *Lovasco* Court held that the investigative delay did not deprive the defendant of his due process rights and noted that imposing a duty upon prosecutors to file charges as soon as probable cause exists “‘would have a deleterious effect both upon the rights of the accused and upon the ability of society to protect itself.’” *Id.* at 791 (quoting *United States v. Ewell*, 383 U.S. 116, 120 (1966)).

The same is true in the present case. The defendant has not shown—and cannot show—that the Government caused any pre-indictment delay in this case to gain a tactical advantage. The defendant argues that “[t]actical, reckless, and bad faith motives can reasonably be inferred from the way the government has ignored evidence, delayed any prosecution, enlisted partisan lawyers to do its bidding, circumvented established precedent to illegally obtain evidence, and misleadingly quoting banal testimony so that it could be labeled ‘perjury.’” (Def. Mot. 7 at 15). But rhetoric aside, the defendant offers nothing beyond baseless speculation in support of her claims.

The defendant claims a twenty-six-year delay on the part of the Government in bringing Counts One through Four and a four-year delay as to Counts Five and Six. (Def. Mot. 7 at 4). That is not so. The USAO-SDNY opened its investigation into Epstein and his co-conspirators in late November 2018. *See* Section IV, *infra*. Epstein was charged by indictment on July 2, 2019. Thereafter, the Government continued its investigation, which included interviewing two victims

(Minor Victim-1 and Minor Victim-3) for the first time. In particular, Minor Victim-1 first agreed to be interviewed in September 2019, and Minor Victim-3 first agreed to be interviewed in August 2019.²¹ The Government conducted multiple additional interviews of both victims, as well as other witnesses, and took additional investigative steps over the next several months before it was prepared to seek an indictment charging the defendant. Those two victims were critical to the investigation, as they helped form the basis of the charges in the Indictment, which the Government sought on June 29, 2020, less than a year after the victims came forward. That period of time—and, in particular, less than one year between when key victims came forward and the Indictment was obtained—cannot possibly give rise to a colorable due process violation.²² *See Cheung Kin Ping*, 555 F.2d at 1072 (finding that “the government is not responsible for a period of delay during which an important witness is unavailable to it” and describing the delay as the period between the witness’s cooperation and the date of indictment); *United States v. Robinson*, 543 F.2d 951, 961 (2d Cir. 1976) (“If there was any intentional delay in returning the instant indictment, it was due in significant measure to the refusal of critical witnesses until 1973 to reveal what they knew.”). *Cf. Lovasco*, 431 U.S. at 796 (“Rather than deviating from elementary standards of fair play and decency, a prosecutor abides by them if he refuses to seek indictments until he is completely

²¹ While the Government is proffering these facts for purposes of this Motion, the underlying information, which is contained in the FBI 302 reports of interviews with the victims, will be produced to the defense as 3500 material in advance of trial.

²² In this respect, the Government notes that significant aspects of the defendant’s argument rest on a faulty premise: *i.e.*, that the Government *could have* indicted the defendant at any time between 1994 and 2020, but simply chose not to do so for tactical reasons. As noted above, two key witnesses who helped give rise to the instant charges did not agree to speak law enforcement until 2019, facts that significantly undercut the notion that the Government was intentionally sitting on a criminal case against the defendant for any meaningful period of time. *Cf. Ex. 3* (OPR Report) at 81 (“Villafaña told OPR that, apart from the women named in the NPA, the investigation had not developed evidence of ‘any other potential co-conspirators.’”); *id.* at 167 (with respect to Maxwell, “according to Villafaña, in 2007, they ‘didn’t have any specific evidence against her.’”).

satisfied that he should prosecute and will be able promptly to establish guilt beyond a reasonable doubt.” (internal quotation marks and citations omitted)).

Moreover, even if the Court were to determine that a twenty-six-year period of delay were applicable here, the defendant’s motion should be dismissed because she failed to show that the Government acted improperly to obtain a tactical advantage. *See, e.g., Pierre-Louis*, 2018 WL 4043140 (denying motion to dismiss for pre-indictment delay as to conduct charged in 2016 involving sexual abuse of minors from 1998 to 2007 as defendant failed to satisfy both prongs of pre-indictment delay standard); *United States v. Burke*, No. 09 Cr. 135 (SJ), 2011 WL 2609837, at *7 (E.D.N.Y. July 1, 2011) (denying motion to dismiss indictment based on thirty-year pre-indictment delay because even if unavailability of alibi witnesses were prejudicial, defendant failed to show that government delayed for its own benefit); *United States v. Carbonaro*, No. 02 Cr. 743 (RCC), 2004 WL 2222145 (S.D.N.Y. Sept. 30, 2004) (in a racketeering conspiracy case in which a 14-year-old murder was alleged as a predicate act, finding that, even assuming defendant had shown actual prejudice, defendant’s motion to dismiss based on pre-indictment delay failed because defendant supplied no evidence that government’s conduct was for an improper purpose).

The defendant claims that the Government intentionally delayed the indictment in this case with a prescient view towards capitalizing on civil litigation. For instance, Maxwell asserts that it “has been advantageous to the government to have aggressive lawyers collecting information from Ms. Maxwell as part of civil discovery and disseminating that information to the public, as part of an ongoing campaign to vilify Ms. Maxwell.” (Def. Mot. 7 at 16). She again cites the subpoena the Government issued to Boies Schiller & Flexner LLP (“Boies Schiller”) to obtain materials from the Giuffre civil litigation. (*Id.*). Leaving aside the fact that, as set forth in Section IV, the Government obtained such materials through a judicially approved and entirely appropriate

process, the inference that the defendant urges this Court to draw—that the Government delayed seeking an indictment to gain a tactical advantage and did so through strategy in the pending civil litigation—is both unsupported by the record and illogical.

The defendant makes much of the Government having moved to intervene and stay the proceedings in *Doe v. Indyke*, No. 20 Civ. 484 (JGK), while the Government has not moved to stay *Giuffre v. Maxwell*. (Def. Mot. 7 at 16-19). She suggests that there is some “sharp contrast” between the Government’s actions in the various civil matters, which “establish a strong inference that as long as the government stood to gain a tactical advantage by delaying the indictment . . . , it would not move to intervene.” (*Id.* at 19). Setting the defendant’s conspiracy theories aside, the civil matters were in completely different procedural postures, which implicate different concerns regarding a pending criminal case. The *Giuffre v. Maxwell* litigation was settled and complete well before the Government even opened its investigation in this case. By contrast, the *Doe v. Indyke* case was initiated after the Government opened its investigation and remained ongoing after the Indictment in this case was filed.²³ The defendant quotes the Government’s letter to Judge Freeman requesting permission to intervene and stay *Doe v. Indyke* (*see id.*), but omits the portion of that letter in which the Government explained that, as far as it was aware, *Doe v. Indyke* was the “lone case in this District that has not yet been either resolved or stayed at this point. . . . In

²³ In particular, *Giuffre v. Maxwell* was resolved in 2017 and the determination of what material should remain sealed remains the only open issue. Accordingly, there is no more discovery to be conducted in the *Giuffre* case and no possible concern to the Government that, for example, its trial witnesses in the criminal case might be deposed in that civil case. In *Doe v. Indyke*, on the other hand, discovery was just beginning, and if discovery were to have proceeded, multiple witnesses or potential witnesses at the criminal trial would likely have been subject to deposition. That concern, among others, raised a significant risk that proceeding with the civil matter would adversely affect the ongoing criminal prosecution against the defendant. Moreover, the interests of judicial economy and the public interest in enforcement of the criminal law were served by a stay in the *Doe* case because the outcome of the criminal case could resolve disputed issues in the *Doe* case. Such concerns are not present in *Giuffre v. Maxwell*.

particular, this matter appears to be the only remaining active civil case in this District in which claims against Ghislaine Maxwell have been asserted.” (20 Civ. 484 (DCF) (JGK), Dkt. No. 80 at 2). The defendant’s baseless conjecture about the Government’s supposedly nefarious reasons for delaying her prosecution are not sufficient to support a dismissal of the Indictment. The defendant ignores the fact that cases such as this one take time to investigate and indict.

The defendant also suggests that the Government engaged in reckless disregard of circumstances that would likely impede her ability to mount an effective defense. (Def. Mot. 7 at 5-6, 15). As an initial matter, this argument falls short of “a standard that requires a showing of intentionality.” *United States v. Wey*, No. 15 Cr. 611 (AJN), 2017 WL 237651, at *13 n.8 (S.D.N.Y. Jan. 18, 2017).²⁴ While this Court in *Wey* did not foreclose the possibility of recklessness sufficing under certain circumstances, much as in *Wey*, “the instant case does not require this Court to pass on the issue,” *id.*, because there is no evidence of recklessness in this case. To the contrary, as detailed above, the Government acted promptly in bringing criminal charges shortly after two key victims whose testimony helped give rise to those charges first agreed to speak with law enforcement. Baseless speculation aside, the defendant offers no argument or evidence as to how or why the Government acted recklessly here.

In sum, not only does the defendant fail to demonstrate actual, non-speculative prejudice owing to pre-indictment delay, but she also fails to establish that the Government intentionally

²⁴ This Court has noted “some disagreement among the district courts in this Circuit as to whether *reckless*—as opposed to intentional—disregard of circumstances . . . may support a due process challenge based on pre-indictment delay,” but concluded that “the pertinent decisions [], on balance, more plainly comport with a standard that requires a showing of intentionality.” *Wey*, 2017 WL 237651, at *13 n.8 (citing *Cornielle*, 171 F.3d at 752 (defendant bears burden of showing that “delay was a course *intentionally* pursued by the government for an improper purpose”) (emphasis added)); *see also United States v. Gonzalez*, No. 00 Cr. 447, 2000 WL 1721171, at *1 & n.1 (S.D.N.Y. Nov. 17, 2000) (“Neither the Supreme Court nor the Second Circuit . . . has adopted this alternative [recklessness] standard.”).

manufactured any alleged delay to gain a tactical advantage over her. She has “offered no credible evidence to suggest that the Government tarried in bringing charges against [her] solely to gain some prosecutorial advantage.” *Pierre-Louis*, 2018 WL 4043140, at *5. As such, because the defendant cannot meet her “heavy burden” of showing both actual prejudice and unjustifiable Government conduct, her motion to dismiss the Indictment for pre-indictment delay should be denied.²⁵

IV. The Court Should Deny the Defendant’s Motions to Suppress

The defendant moves to suppress evidence the Government obtained pursuant to a grand jury subpoena issued to Boies Schiller and to dismiss Counts Five and Six under the Due Process Clause, the Fourth Amendment, the Fifth Amendment, and the Second Circuit’s decision in *Martindell v. Int’l Tel. and Tel. Corp.*, 594 F.2d 291 (2d Cir. 1979). (Def. Mots. 3 & 11). In particular, the defendant contends that the Government violated the Second Circuit’s decision in *Martindell* and misled Chief Judge McMahon in obtaining the modification of a protective order. She also contends the subpoena was overly broad and amounted to an unlawful search of materials in which she had a reasonable expectation of privacy, as well as an infringement of her privilege against self-incrimination. Although the defendant styles her request for relief as two separate

²⁵ The defendant asks the Court for leave to supplement her motion “*after* the government provides her with meaningful discovery” and notes that “*after* the disclosure of meaningful discovery, [she] may request that the Court defer ruling on this motion until after any trial if the indictment has not been dismissed on other grounds.” (Def. Mot. 7 at 1). As noted above and discussed further in Section X, *infra*, the Government has complied with its Rule 16 obligations and will produce *Giglio* and *Jencks* Act materials well in advance of trial. The Court should reject the defendant’s invitation to defer ruling on this motion. *See, e.g., United States v. Muric*, No. 10 Cr. 112 (LTS), 2010 WL 2891178, at *1 (S.D.N.Y. July 13, 2010) (“The motion to dismiss the Indictment as the result of pre-indictment delay is therefore denied, without prejudice to appropriately supported later motion practice.”); *United States v. Drago*, No. 18 Cr. 0394 (SJF) (AYS), 2019 WL 3072288, at *2 (E.D.N.Y. July 15, 2019) (denying motion to dismiss on the ground of pre-indictment delay without prejudice to renewal).

motions, the suppression motions overlap in fact and argument, and accordingly, the Government responds to both motions in this section.

As set forth herein, the defendant's suppression motions challenging a judicially approved grand jury subpoena should be denied without a hearing for multiple reasons. As an initial matter, the defendant's claim that the Government "circumvented" *Martindell* fails because the Government issued a valid grand jury subpoena, sought judicial authorization to permit compliance with the subpoena, and obtained materials from Boies Schiller that otherwise would have been covered by the relevant protective order only after receiving such authorization. In any event, even if the Government's motion did not satisfy *Martindell*, *Martindell* provides no basis to suppress evidence, and the defendant cites no authority in support of that request. Second, the defendant's claim that the subpoena was a warrantless search in violation of the Fourth Amendment fails because she has not established standing to challenge a judicially approved grand jury subpoena issued to a third party, and because the subpoena was entirely lawful. Even if she had standing, her claim still fails because suppression would be improper under the good faith exception and the inevitable discovery doctrine. Third, the defendant's claim that the subpoena violated her Fifth Amendment rights fails because, among other things, such a violation requires coercion and state action. Fourth, the defendant's claim that the Government violated the Due Process Clause is meritless, as the Government's conduct was not, by any reasonable definition, outrageous or conscience shocking. And finally, the defendant's request for a hearing should be denied because she has proffered no admissible evidence to support her accusations of Government misconduct; instead, she relies entirely on an anonymously sourced article that, as detailed herein, she cites to describe certain events that simply did not occur.

Accordingly, the defendant's suppression motions should be denied.

A. Factual Background

The defendant's motion is, at its core, premised on a false factual narrative. The defendant alleges, based on a *New York Daily News* article, that Boies Schiller and the Government colluded starting in at least early 2016 with the "precise[] design[]" of having the defendant "charged with perjury." (Def. Mot. 3 at 10). In particular, she claims that Boies Schiller met with the Government in February 2016, urged the Government to open an investigation of Epstein and Maxwell, told the Government what was in its files, and met with the Government again in the summer of 2016 to ask if it would consider charging the defendant with perjury after her two depositions. (*Id.* at 2, 8).

That is not so. While a now former Assistant United States Attorney ("AUSA-1") met with a lawyer from Boies Schiller and two other attorneys *about Epstein* in February 2016, that meeting was not focused on the defendant, and AUSA-1 did not participate in a second meeting with those attorneys. Moreover, that February 2016 meeting *pre-dated* the depositions that gave rise to the perjury counts in the Indictment, which itself was obtained more than four years thereafter.²⁶ The Indictment was instead the product of an investigation that was not opened until late 2018 and that had nothing to do with a meeting that had taken place nearly three years earlier with an AUSA who played no part in the decision to open the 2018 investigation and similarly played no part in the 2018 investigation itself.

1. The Civil Lawsuit against Maxwell

In or about September 2015, Giuffre, represented by Boies Schiller, filed a civil defamation lawsuit against Maxwell in the Southern District of New York. (*See* 15 Civ. 7433 (LAP), Dkt.

²⁶ While, as discussed herein, the Government has uncovered evidence of a phone call from one of the attorneys, Stan Pottinger, to AUSA-1 in early May 2016, AUSA-1 has no specific memory of that call, nor did AUSA-1 provide any notes or records of that call to the team working on the instant investigation.

No. 1). In short, Giuffre alleged that Maxwell had defamed her when Maxwell stated that Giuffre was not the victim of sex crimes perpetrated by Epstein and Maxwell. Giuffre alleged that Maxwell had made those false statements for the “malicious purpose of further damaging a sexual abuse and sexual trafficking victim; to destroy Giuffre’s reputation and credibility; to cause the world to disbelieve Giuffre; and to destroy Giuffre’s efforts to use her experience to help others suffering as sex trafficking victims.” (*Id.* at 8).

2. February 2016 Meeting

Attorney Peter Skinner of Boies Schiller contacted AUSA-1, who was at that time the Human Trafficking and Project Safe Childhood Coordinator of the USAO-SDNY, to request an opportunity for him and other attorneys to meet with AUSA-1 to present on a potential case. (*See* Ex. 4 at 1).²⁷ AUSA-1 agreed to the meeting, and on or about February 29, 2016, AUSA-1 met with three attorneys—Peter Skinner of Boies Schiller, Brad Edwards, and Stan Pottinger—regarding Jeffrey Epstein. (*See* Ex. 4 at 1). Edwards and Pottinger were also attorneys for Virginia Roberts Giuffre, who had alleged that she is a victim of sex crimes perpetrated by Epstein and Maxwell.²⁸ (Ex. 5 at 1).²⁹

At the meeting, Edwards provided AUSA-1 with details about, among other things, the USAO-SDNY’s prior investigation of Epstein, as well as Giuffre’s personal history and experience with Epstein. (*See* Ex. 5). The focus of the meeting was on Epstein, and AUSA-1 understood that the attorneys were advocating that the USAO-SDNY open an investigation into Epstein. (*See* Ex.

²⁷ On February 11, 2021, to help gather facts relevant to the reporting contained in the *New York Daily News* article, the USAO-SDNY and the FBI conducted a telephonic interview of AUSA-1. Notes of that interview are attached as Exhibit 4.

²⁸ Peter Skinner of Boies Schiller is not listed on the docket as an attorney representing Giuffre.

²⁹ AUSA-1’s notes from the February 29, 2016 meeting are attached as Exhibit 5.

4 at 1, 4). During the meeting, the attorneys referenced multiple individuals who worked for and/or helped Epstein, including Maxwell, but the attorneys primarily focused their presentation on Epstein. (*See id.* at 1-2, 4). The attorneys did not present particular criminal statutes that might be pursued by the USAO-SDNY or make suggestions about investigative steps, nor did they suggest the use of civil lawsuits as a means to conduct a criminal investigation. (*Id.* at 2-3). AUSA-1 did not tell the attorneys whether or not an investigation would be opened, consistent with her standard practice. (*Id.* at 3). After the meeting, AUSA-1 received a limited number of emails from the attorneys (*see* Exs. 6 & 7).³⁰ AUSA-1 did not participate in a second meeting with those attorneys and has never met David Boies. (*See* Ex. 4 at 4).

AUSA-1 recalls being aware of depositions as a general matter, but she does not recall having knowledge of who had been deposed or the substance of the depositions. (*Id.* at 5). AUSA-1 does recall thinking through the challenges of a potential perjury investigation, but she does not recall who specifically would have been the target of such an investigation. (*Id.*). AUSA-1 does not recall being asked if the USAO-SDNY would consider charging Maxwell with perjury. (*Id.*). Moreover, and critically for present purposes, the meeting described above *pre-dated* the depositions which give rise to the perjury counts in the instant Indictment, making it all but impossible that the attorneys suggested, during that February 2016 meeting, that Maxwell had committed perjury in depositions that, as detailed below, had yet to occur.

The Government has also conducted a review of AUSA-1's emails in an effort to determine whether any further contacts occurred. One email dated May 3, 2016 from Pottinger to AUSA-1 appears to suggest that AUSA-1 spoke with Pottinger on or about May 2, 2016 by telephone (*see*

³⁰ AUSA-1 left the USAO-SDNY in 2019. Since receiving the Defense Motions, the Government has searched AUSA-1's archived emails for any email communications with attorneys from Boies Schiller or the other attorneys who participated in the February 2016 meeting. The Government is producing all identified emails to defense counsel today.

Ex. 7), but AUSA-1 does not recall the details of that conversation (*see* Ex. 4 at 4), nor is the Government aware of any notes or other records documenting the substance of the call. The Government has not identified any records that suggest AUSA-1 ever communicated via email with Pottinger, Edwards, Skinner, or any other attorney at Boies Schiller regarding this matter after May 3, 2016.

The USAO-SDNY did not open an investigation into Epstein or Maxwell in 2016. (*Id.* at 4).

3. The April and July 2016 Depositions of Maxwell

On March 2, 2016, Maxwell moved for entry of a protective order for materials produced in discovery and submitted a proposed order for the consideration of the Honorable Robert W. Sweet, the United States District Judge who was then overseeing the *Giuffre v. Maxwell* civil litigation. (*See* 15 Civ. 7433 (LAP), Dkt. Nos. 38 & 39-1). On or about March 4, 2016, Boies Schiller represented that Giuffre did not oppose the entry of a protective order, but opposed the form proposed by Maxwell out of concern that it was overly broad and could lead to over-designation of material as confidential. (*See* 15 Civ. 7433 (LAP), Dkt. No. 40 at 2). Boies Schiller submitted a redline of Maxwell's proposed protective order, deleting some provisions and adding language that confidential material could be disclosed to law enforcement. (Def. Mot. 3, Ex. B). On March 18, 2016, Judge Sweet entered a protective order governing the discovery and dissemination of confidential information after the parties agreed to the form of the order originally proposed by Maxwell. (*See* 15 Civ. 7433 (LAP), Dkt. No. 62; *see also* Def. Mot. 3, Ex. G at 2-3).

The protective order, among other things, restricted the parties from disclosing discovery materials marked confidential to third parties, absent express permission from the Court.

In connection with the defamation suit, Maxwell was deposed by Boies Schiller, counsel for Giuffre, on April 22, 2016 and July 22, 2016.

On or about May 24, 2017, the parties entered into a settlement agreement and voluntarily dismissed the civil action. (*See* 15 Civ. 7433 (LAP), Dkt. No. 916). Boies Schiller has continued to represent Giuffre in post-settlement litigation. *Giuffre v. Maxwell*, No. 18-2868 (2d Cir.); *Giuffre v. Maxwell*, No. 20-2413 (2d Cir.).

4. The USAO-SDNY Commences the Instant Investigation in 2018

On or about November 29, 2018, the USAO-SDNY initiated its investigation into Epstein and possible co-conspirators, and formally opened the investigation by completing the requisite paperwork to open an investigation on or about November 30, 2018. The investigation was prompted by a series of articles published by the *Miami Herald* earlier that same week relating to Epstein, his conduct, and the circumstances of his prior conviction. *See* Julie K. Brown, “Even from Jail, Sex Abuser Manipulated the System. His Victims Were Kept in the Dark,” *Miami Herald* (Nov. 28, 2018).³¹ AUSA-1 was not involved in the decision to open the investigation or in the investigation itself. (*See* Ex. 4 at 6). Indeed, AUSA-1 stopped serving as the Office’s Human Trafficking and Project Safe Childhood Coordinator as of April 2017.

Shortly after initiating the investigation, the prosecutors involved in the investigation learned of the prior February 2016 meeting and requested copies of AUSA-1’s notes and records

³¹ Indeed, on July 8, 2019, at the press conference following the arrest of Epstein, Geoffrey S. Berman, then United States Attorney for the Southern District of New York, stated that while he was not “going to go into any aspects of how our investigation originated[,] I will say that we were assisted from some excellent investigative journalism.”

from that meeting. On or about December 6, 2018, AUSA-1 provided the prosecutors with her notes from the February 2016 meeting (which are attached as Exhibit 5) and documents the attorneys provided.³²

5. The USAO-SDNY's Subpoenas and *Ex Parte* Applications for Materials

Shortly after opening the investigation in late November 2018, the Government identified possible victims and their counsel through public filings or media reports, which included Boies Schiller. (Def. Mem. 3, Ex. E at 2-3). The USAO-SDNY first contacted Boies Schiller about its investigation on or about December 18, 2018. Shortly thereafter, in or about December or January 2018, the Government indicated to Boies Schiller that it intended to make document requests. Boies Schiller generally advised the Government that a protective order would govern some of the materials. (*Id.* at 3).

In or about February 2019, approximately two months after the USAO-SDNY opened its investigation (and almost three years after the February 29, 2016 meeting described above), the USAO-SDNY issued two criminal grand jury subpoenas to Boies Schiller. One of the subpoenas requested non-privileged documents relating to *Giuffre v. Maxwell*, 15 Civ. 7433 (RWS); the other

³² The Government has reviewed the file that AUSA-1 provided to the prosecution team on or about December 6, 2018 and understands, based on a review of that file, that at the February 2016 meeting, AUSA-1 received copies of Epstein's black book, flight records, and Palm Beach Police Department reports. Although AUSA-1 does not now recall the attorneys providing her with any documents at the meeting (Ex. 4 at 2), an email she sent to the prosecution team on December 6, 2018 refers to these documents as materials that the attorneys provided at the meeting.

The Government notes that as of March 7, 2016, one week after AUSA-1's February 29, 2016 meeting with the attorneys when she received these documents, Maxwell had only produced two emails in response to Giuffre's discovery requests. (*See* 15 Civ. 7433 (LAP), Dkt. No. 43 at 1-2). None of the documents apparently provided to AUSA-1 during the February 2016 meeting was an email. Accordingly, the Government has no reason to believe that Giuffre's counsel provided AUSA-1 with any discovery materials from the *Giuffre v. Maxwell* civil case. AUSA-1 also does not believe she ever received any such discovery materials. (Ex. 4 at 6).

requested the same relating to *Jane Doe 43 v. Epstein, et al.*, 17 Civ. 0616 (JGK) (SN). Because of the ongoing and covert nature of the grand jury investigation, and consistent with its standard practice under such circumstances, the Government did not notify the defendant or her counsel that it had issued the subpoenas.

In response to receiving the subpoenas, Boies Schiller began producing materials not covered by the protective orders in the relevant civil cases. However, Boies Schiller also had advised the Government that although it would not otherwise contest compliance with the subpoenas, it believed that the protective orders precluded full compliance.³³ (Exs. 8 & 9). Accordingly, the Government applied *ex parte* and under seal to each relevant court (Judge Sweet and Magistrate Judge Sarah Netburn, respectively) to request that each court modify the respective protective orders to permit compliance with the subpoenas. (Def. Mot. 3, Ex. C).

Following a request by Judge Sweet for briefing supporting the Government's initial application, *see* Def. Mot. 3, Ex. D at 4, 20; Ex. G at 6, the Government submitted *ex parte* and sealed letters in support of its applications to each court on or about February 28, 2019. (Exs. 8 & 9). The Government wrote, "Where, as here, a grand jury subpoena has validly issued, and the recipient of the subpoena is not contesting compliance—but rather seeking authorization to comply with the subpoena—a court should grant such permission through limited modification of an applicable protective order, absent countervailing interests not present in this case." (*Id.* at 2). The Government submitted that the court was "best guided" by *Chemical Bank v. Affiliated FM Ins. Co.*, 154 F.R.D. 91, 93 (S.D.N.Y. 1994), in which the court rejected an application for a party in civil litigation to be held in contempt for complying with a grand jury subpoena by producing

³³ Significantly, and as detailed herein, Boies Schiller did not produce to the Government *any* materials subject to the protective orders until, as further described below, it received an order granting it the ability to do so in one of the civil cases.

materials in violation of a protective order, without first obtaining authorization from the court, because the court would have granted such authorization had it been sought. (*Id.*). The court also stated that such formal judicial approval could be obtained *ex parte* if sufficient reason was provided. (*Id.*). In its letters, the Government noted that its “specific knowledge of the subject matter of discovery materials is relatively limited, due to the confidential nature” of the litigation. (*Id.* at 2 n.1). The Government also submitted that the court need not employ the *Martindell* balancing test to evaluate the Government’s ability to obtain access to materials covered by a protective order because (1) the *Martindell* balancing test generally relates to “instances where the Government sought protected information *without* [] grand jury process” and (2) “any presumption against modification of a protective order is unreasonable where, as here, the protective order is on its face temporary or limited.” (*Id.* at 3-4).

6. Proceedings before Chief Judge McMahon

a. March 26, 2019 Hearing

Judge Sweet passed away in March 2019 before ruling on the Government’s application. After Judge Sweet’s death, but before the civil case was reassigned to a new judge, Chief Judge McMahon took up the Government’s application. Chief Judge McMahon subsequently inquired about the Government’s application in two transcribed *ex parte* and sealed hearings. (Def. Mot. 3, Exs. D & E). At the first hearing, on March 26, 2019, Chief Judge McMahon inquired as to why Boies Schiller did not make an application for permission to be relieved from the protective order, to which the Government replied that it could not “speak to why Boies Schiller in particular didn’t make their own application.” (Def. Mot. 3, Ex. D at 3). The Government further noted that Boies Schiller “simply isn’t in a position to be able to describe the investigation in the way that we have in our submission.” (*Id.* at 11-12). Chief Judge McMahon noted that she believed that

Martindell was applicable. (*Id.* at 3). She stated that were the Government’s application disclosed to the parties, “Maxwell would protest” and argue that the Government lacked standing as it was not a party to the protective order. (*Id.* at 8). In response to questions from Chief Judge McMahon, the Government explained that the protective order, on its face, did not implicate the types of confidential business information or trade secrets ordinarily considered by courts in conducting the *Martindell* balancing test. (*Id.* at 13).

Chief Judge McMahon stated that the protective order did not contain a provision allowing a party to the order to disclose materials requested by law enforcement without permission of the court, noting her understanding that “it may have been negotiated out.” (*Id.* at 14-15). The court inquired whether the Government’s position was that “reliance on the nondisclosure of confidential materials to law enforcement in connection with a grand jury subpoena that has been duly authorized would be unreasonable.” (*Id.* at 14). The Government responded in the affirmative, stating that the Government believed a provision precluding compliance with a law enforcement request would be void for public policy. (*Id.* at 15). The Government further cited *Chemical Bank* in support of the proposition that it would be unreasonable to rely on a protective order provision that barred the disclosure of information to law enforcement. (*Id.* at 15-16).

In response to questions about the breadth of the subpoena, the Government explained that it was “essentially unable to significantly narrow the request for information We have either little or no additional information than the Court does in terms of what materials there are [and] who was deposed.” (*Id.* at 17). In response to Chief Judge McMahon’s question about the privacy interests implicated by the protective order, (*id.* at 16-17), the Government also noted that it was dissimilar to an ordinary third-party intervenor in that it would be “extremely restricted” in its use

of the materials in light of the “extraordinary protections” of Federal Rule of Criminal Procedure 6(e). (*Id.* at 17-18).

Finally, Chief Judge McMahon also inquired whether the materials sought by the Government might be used to commence criminal proceedings against either of the parties to the libel case, *i.e.*, including Maxwell. (*Id.* at 18). The Government acknowledged that possibility as a general matter. (*Id.*). Chief Judge McMahon noted that the parties to the protective order relied on that order “in order to give whatever in discovery they gave, whether it was deposition testimony they gave or – then again, I can’t fathom why anybody who has any criminal exposure would not have taken the Fifth Amendment in response to questions in a civil deposition, but I don’t know.” (*Id.* at 18-19). The Government stated, “I do not know, but I think it is entirely possible that what we are seeking is page after page of people taking the Fifth. That is entirely possible. But to the extent that it is not or there are other materials -- and this may be bad for our argument, but in all transparency and candor, I think there may be other individuals who also relied on the protective order.” (*Id.*). The Government further explained that it “want[ed] to have a formal application” for the relevant materials and took that approach to “avoid the types of problems” created by other less formal government requests in other cited cases. (*Id.* at 20).

b. April 9, 2019 Hearing

Chief Judge McMahon held another conference on April 9, 2019. She stated that she wanted “to make sure I’m not in a *Chemical Bank* kind of situation, so I would like to know about contacts between [the USAO-SDNY and Boies Schiller] prior to the issuance of the subpoena *on the subject of your investigation*.” (Def. Mot. 3, Ex. E at 2 (emphasis added)).³⁴ In *Chemical*

³⁴ Tellingly, Maxwell omits the italicized portion of this question from her motion, thereby stripping important context from the nature of Chief Judge McMahon’s question which, as asked, was focused on “your investigation.” (*See* Def. Mot. 3 at 7).

Bank, of course, as noted above, the subpoena recipient *produced materials to a prosecutor in direct violation of the relevant protective order*, without seeking a modification of the protective order and without any court authorization to do so. 154 F.R.D. at 93. Moreover, in that case, the District Attorney seemingly opened its investigation and issued the subpoena in direct response to information provided by the subpoena recipient who was then a party to civil litigation. *Id.*

The Government responded to Chief Judge McMahon by explaining its contacts with Boies Schiller in connection with the instant (and only) investigation it had opened on Epstein, that is, the investigation prompted by, and opened following, public reporting on Epstein in November 2018. In particular, the Government explained that the USAO-SDNY opened an investigation first, on either November 30, 2018 or December 3, 2018, and then made contact with Boies Schiller shortly thereafter. (Def. Mot. 3, Ex. E at 2-3). In this respect, the Government further explained that the USAO-SDNY, after opening the investigation, had endeavored to identify counsel who represented victims or witnesses in public filings or media reports, which included Boies Schiller, noting that “[w]ith respect to Boies Schiller in particular, we quickly came to learn during the investigation that they had at the time either active or recently completed civil litigation” and indicated that the USAO-SDNY intended to make document requests. (*Id.*). The Government also noted that, unlike in *Chemical Bank*, here Boies Schiller had informed the Government that it would be unable to comply with the subpoena in light of the protective order. (*Id.* (noting that Boies Schiller “generally advised us that they believed there was a protective order that would govern at least some of the materials, and that is why we ultimately made the application to the Court.”)).

c. Chief Judge McMahon’s Memorandum and Order

On or about April 9, 2019, Chief Judge McMahon granted the Government's application and issued a memorandum and order. (Def. Mot. 3, Exs. F & G). The Court noted that while the Government's application was procedurally "[i]rregular," there was precedent for granting the Government's request and, therefore, the Court would consider the application. (Def. Mot. 3, Ex. G at 6, 8-9). The Court found that, contrary to the Government's arguments, it was appropriate for the Court to analyze the Government's application in light of the *Martindell* factors. (*Id.* at 9-12).

In so doing, Chief Judge McMahon considered, among other things, "the degree to which . . . the party who could be expected to oppose unsealing[] reasonably relied on the protective order." (*Id.* at 16). She concluded that such reliance was unreasonable. (*Id.* at 22). She evaluated the factors under Second Circuit case law that are relevant to assessing whether a party's reliance on the protective order was reasonable, namely the scope of the protective order, the language of the order itself, the court's level of inquiry before granting the order, and the nature of reliance on the order. (*Id.* at 17). She concluded that first three factors favored granting the Government's application for modification. (*Id.* at 17-20). Chief Judge McMahon noted that, as the order "plainly gives the court the power to enter an order compelling disclosure to anyone—law enforcement included—Maxwell could not reasonably have relied on the absence of automatic permission for such disclosure to shield anything she said or produced from a grand jury's scrutiny." (*Id.* at 18-19).

As to the last factor, Chief Judge McMahon found that "the nature of the parties' reliance on the order does seem to weigh against modification." (*Id.* at 20). She noted that the record indicated that "Giuffre likely could not have secured Maxwell's deposition—at least in the absence of substantial court involvement—without" the protective order. (*Id.*). "However, the only thing

on which Maxwell or anyone else might reasonably have relied is that Giuffre or her lawyers would not do what the defendant in *Chemical Bank* did—that is, forward discovery materials in their possession to prosecutors for the purpose of fomenting an investigation. But I am not faced with that situation.” (*Id.* at 21). Chief Judge McMahon further stated, “Nothing in this record suggests to me that Giuffre or Boies Schiller had anything to do with the Government’s decision to convene a grand jury to look into the matters that were the subject of the [civil lawsuit].” (*Id.*). Instead, she explained that the Government informed the Court that it had “contacted Boies Schiller as part of its search for parties who might have been victims in its investigation; and that Boies Schiller told the Government that it could not consensually produce at least some documents in its files because of the existence of the Protective Order.” (*Id.*). Chief Judge McMahon concluded that it was “quite clear that Boies Schiller did not foment the Government’s investigation.” (*Id.*).

Among other conclusions, Chief Judge McMahon found that because Maxwell’s reliance on the protective order in that case as a “shield [. . .] from the court-ordered disclosure of Confidential Materials pursuant to a grand jury subpoena was unreasonable, the Court may exercise its discretion to grant the Government’s application.” (*Id.* at 22). The Court further concluded that “[t]he Government has persuasively demonstrated extraordinary circumstances, which would entitle it to modification in any event.” (*Id.*). She also noted that “while in other circumstances the breadth of the subpoena might be troubling, here the Government is in no position to narrow its request, because [the civil case] was litigated almost entirely under seal.” (*Id.* at 25).

Chief Judge McMahon permitted that the Government share the order—and only that order, which itself prohibited further dissemination, and not including any other materials associated with the Government’s application—with Boies Schiller. The relevant order was

provided to Boies Schiller shortly after it was issued. The materials provided by Boies Schiller included, in addition to deposition transcripts of Maxwell and other individuals, materials produced by Giuffre, Maxwell, and non-parties, and court-related pleadings in the civil case.

7. Magistrate Judge Netburn's Order

On or about April 9, 2019, the Government advised Judge Netburn, who had not yet ruled on the Government's other application in *Jane Doe 43 v. Epstein, et al.*, 17 Civ. 0616 (JGK) (SN), of Chief Judge McMahon's decision via *ex parte* and sealed letter. (Def. Mot. 3, Ex. I). Subsequently, on April 16, 2019, Judge Netburn denied the Government's application. (Def. Mot. 3, Ex. H). Judge Netburn found that she was authorized under the All Writs Act to modify the protective order, but declined to do so as the Government had not established exceptional circumstances or a compelling need. (*Id.* at 3). She concluded that on the record before her, the parties' reliance on the protective order was reasonable and the presumption of confidentiality should apply. (*Id.* at 5-6). The court rejected the Government's arguments for exceptional circumstances and compelling need as relying on "the general desire for secrecy" and "unpersuasive" under the *Martindell* standard. (*Id.* at 6). Judge Netburn concluded that "the Government must demonstrate not that *this investigation* is an extraordinary circumstance, but that *the reason for seeking the documents* is so extraordinary or compelling that there is a need to modify the Protective Order. The Government has not met that standard." (*Id.* at 7) (emphasis in original).

8. Unsealing of Maxwell's Depositions

Three months after Chief Judge McMahon issued her Order, *Giuffre v. Maxwell* was reassigned to the Honorable Loretta A. Preska on July 9, 2019. On or about July 23, 2020, Judge Preska ordered unsealed certain litigation materials, including, and related to, Maxwell's April

2016 deposition transcript. (*See* 15 Civ. 7433 (LAP), Dkt. No. 1077). Maxwell appealed Judge Preska’s order, arguing that the court abused its discretion in ordering the unsealing of the deposition materials and that Maxwell’s interests outweighed the public’s interests in access to the materials. *Giuffre v. Maxwell*, No. 20-2413 (2d Cir.), (Dkt. No. 140-1 at 2). On October 19, 2020, the Second Circuit found that Judge Preska “correctly held that the deposition materials are judicial documents to which the presumption of public access attaches, and did not abuse its discretion in rejecting Maxwell’s meritless arguments that her interests superseded the presumption of access.” (*Id.* at 3).

On October 22, 2020, Maxwell’s April 2016 deposition was publicly filed. (*See* 15 Civ. 7433 (LAP), Dkt. No. 1137-13).

On January 27, 2021, a redacted version of Maxwell’s July 2016 deposition was publicly filed. (*See* 15 Civ. 7433 (LAP), Dkt. No. 1201-14). On February 11, 2021, another version of the July 2016 deposition was publicly filed with fewer redactions. (*See* 15 Civ. 7433 (LAP), Dkt. No. 1212-1).

9. The New York Daily News Article

On October 13, 2020, the *New York Daily News* published an article describing the February 29, 2016 meeting (the “*Daily News* Article” or the “Article”).³⁵ The Article stated, among other things, that defense attorneys representing victims of Epstein and Maxwell “urged” the USAO-SDNY to “open an investigation of the duo” during that meeting. Citing two anonymous sources, the Article described the defense attorneys’ alleged efforts to “pique” the Government’s interest “in a second meeting in the summer of 2016 after Maxwell allegedly

³⁵ *See* Stephen Rex Brown, *Manhattan federal prosecutors declined to pursue Jeffrey Epstein and Ghislaine Maxwell case in 2016: sources*, *New York Daily News*, Oct. 13, 2020, <https://www.nydailynews.com/new-york/ny-jeffrey-epstein-maxwell-case-20201013-jmzhl7zdrzdgrbbs7yc6bfnszu-story.html>.

committed perjury.” According to two anonymous sources, “a second meeting occurred.” However, the Article cites another anonymous source as “insist[ing] [a second meeting] never happened.”

B. The Defendant’s Suppression Motion Should Be Denied

Maxwell seeks suppression of the evidence the Government obtained via a judicially authorized subpoena to Boies Schiller under *Martindell*, the Fourth Amendment, Fifth Amendment, the Due Process clause, and the Court’s inherent authority. However, Maxwell’s motion turns on erroneous facts, runs afoul of controlling law, and should be denied.

1. *Martindell* Provides No Basis to Grant the Relief the Defendant Seeks

Maxwell argues that the Government “circumvented” the Second Circuit’s decision in *Martindell* and “violated Maxwell’s rights,” which requires suppression of the evidence the Government obtained from the subpoena. (Def. Mot. 11 at 11-12). Even assuming that to be true—which, of course, as detailed above and herein, it is not—there is no basis in law to suppress evidence as a result of a *Martindell* violation, and Maxwell cites none in support of her claim. Setting that fatal flaw aside, however, her claim is wrong on both the facts and the law. The Government issued a valid grand jury subpoena for the materials, applied for judicial authorization to modify the protective order to permit compliance with the subpoena, and a district court judge, who evaluated the Government’s application under *Martindell*, properly exercised her discretion in modifying the protective order. Only after receiving that court order did the Government obtain any protected materials from Boies Schiller. Maxwell’s motion should be denied.

a. Applicable Law

“[T]here is no question that a Rule 26(c) protective order is subject to modification,” and a decision to modify such an order is “committed to the sound discretion of the trial court.” *In re*

“Agent Orange” Prod. Liab. Litig., 821 F.2d 139, 147 (2d Cir. 1987); *see also Andover Data Servs., a Div. of Players Computer, Inc. v. Statistical Tabulating Corp.*, 876 F.2d 1080, 1083 (2d Cir. 1989) (“It is well-settled here and elsewhere, for instance, that a Rule 26(c) protective order may be overturned or modified based on a finding of improvidence, extraordinary circumstances or compelling need.”).

In *Martindell*, the Government informally—and without use of a grand jury subpoena—sought access to discovery materials from a civil litigation that were subject to a protective order. 594 F.2d at 294. The Second Circuit found that the “deponents [had] testified in reliance upon [a] Rule 26(c) protective order, absent which they may have refused to testify.” *Id.* at 296. In so ruling, the Second Circuit reasoned that the interest in the enforcement of Rule 26(c) protective orders—which included securing just and speedy determination of civil disputes—was sufficient to outweigh the Government’s interest in obtaining information by means of an informal document request. *Id.* at 295-96. The Second Circuit held that “absent a showing of improvidence in the grant of a Rule 26(c) protective order or some extraordinary circumstance or compelling need, . . . a witness should be entitled to rely upon the enforceability of a protective order against any third parties, including the Government.” *Id.*; *see also In re Grand Jury Subpoena Duces Tecum Dated Apr. 19, 1991*, 945 F.2d 1221, 1224-25 (2d Cir. 1991) (“The *Martindell* test [] does not transform a protective order into a grant of immunity because the test allows a protective order to be overcome by a showing of improvidence in the grant of the order, extraordinary circumstances or compelling need.”); *Palmieri v. State of N.Y.*, 779 F.2d 861, 862 (2d Cir. 1985) (holding that “absent an express finding by the district court of improvidence in the magistrate’s initial grant of the protective orders or of extraordinary circumstances or compelling need by the State for the

information protected thereunder, it was error for the district court to modify the magistrate's orders").

At the same time, in *Martindell*, the court noted that "[t]he reliance of a private party upon protection of pre-existing documents from disclosure to the Government would normally be more difficult to justify than that of a witness who would, absent the protective order, have invoked his privilege and given no testimony at all." *Id.* at 297 n.8; *see also United States v. Davis*, 702 F.2d 418, 422-23 (2d Cir. 1983) (finding *Martindell* inapplicable and affirming enforcement of a grand jury subpoena where "there [was] no indication that [a witness] agreed to testify only in reliance on [an] 'understanding'" of confidentiality and where many records sought "existed prior to the advent of the litigation"). In subsequent cases, the Second Circuit has clarified that the *Martindell* presumption comes into play only when a party reasonably relies on a protective order in providing deposition testimony. *See, e.g., Davis*, 702 F.2d 418; *SEC v. TheStreet.com*, 273 F.3d 222, 230-31 (2d Cir. 2001) (stating that "some protective orders may not merit a strong presumption against modification," as the nature of some orders "may not justify reliance by the parties").

In *United States v. Davis*, the Second Circuit explained that "[r]anged against these considerations [relating to the policy in favor of enforcing Rule 26(c) protective orders] are the reasons for permitting the grand jury broad subpoena power in a criminal investigation." 702 F.2d at 421. The Second Circuit noted the grand jury's "wide ranging authority to inquire into suspected violations of the criminal law; and to effectuate such investigations it may compel the production of documentary evidence or the testimony of witnesses, as it deems necessary." *Id.* at 421-22 (citing *United States v. Calandra*, 414 U.S. 338, 343 (1974)). "Wide latitude in gathering evidence is vital to the grand jury's investigative function." *Id.* at 422; *see Branzburg v. Hayes*, 408 U.S. 665, 688 (1972) ("Although the powers of the grand jury are not unlimited and are subject to the

supervision of a judge, the longstanding principle that ‘the public . . . has a right to every man’s evidence,’ except for those persons protected by a constitutional, common-law, or statutory privilege is particularly applicable to grand jury proceedings.” (internal citations omitted)).

b. Discussion

The Government did not, in any way, attempt to circumvent *Martindell*. To the contrary, the Government presented *Martindell* squarely to the relevant courts, first arguing that its test was not applicable, and then, in the alternative, that the requested relief should be granted even if the courts applied the *Martindell* standard. It cannot possibly be the case that the Government was attempting to “circumvent” a case that it cited 11 times in its argument to both relevant courts. (See (Exs. 8 & 9). Instead, the Government issued a subpoena to Boies Schiller in connection with its investigation and made an application to two judges to modify Rule 26(c) protective orders that precluded full compliance with those subpoenas. While the Government argued that the court need not employ the *Martindell* balancing test for several reasons, it also made arguments under *Martindell* in the alternative. Ultimately, both Chief Judge McMahon and Judge Netburn found that *Martindell* applied and analyzed the Government’s application under that framework.

As Chief Judge McMahon found, even under the *Martindell* approach, testimony provided pursuant to a protective order can be divulged to a grand jury if the government establishes “some extraordinary circumstance or compelling need.” *Martindell*, 594 F.2d at 296. After concluding that reliance on the protective order was unreasonable,³⁶ Chief Judge McMahon found that the “Government [] persuasively demonstrated extraordinary circumstances,” citing “significant

³⁶ See, e.g., *Int’l Equity Invs., Inc. v. Opportunity Equity Partners Ltd.*, No. 05 Civ. 2745 (JGK) (RLE), 2010 WL 779314, at *8 (S.D.N.Y. Mar. 2, 2010) (finding that the parties’ reliance on a civil protective order “was not unreasonable given the nature of the litigation,” but “not so overwhelming as to warrant the indefinite application of *Martindell*’s strong presumption against modification because the order’s broad scope and express language, and the minimal level of court inquiry outweigh the Parties’ reliance.”).

public interest” which resulted in the Government convening a grand jury to investigate a serious crime. (Def. Mot. 3, Ex. G at 22-23). The Court also noted that because the investigation was not publicly known, “the ordinary exercise of grand jury power [*i.e.*, to subpoena witnesses to testify and to produce documents] . . . would implicate and invite the very risk of disclosure—and the possibility of alerting potential criminal targets that they are under investigation, causing them to destroy evidence, flee from prosecution, or otherwise seriously jeopardize the Investigation—that caused the Government to proceed via subpoena [to Boies Schiller] and its related Application.” (*Id.* at 23-24). The Court further noted that the “Government’s interest is bolstered” as the request was made by a grand jury that had issued a “subpoena for the production of documents as part of an ongoing investigation.” (*Id.* at 25). In support of her argument, the defendant cites *Palmieri* where the Second Circuit, applying *Martindell*, reversed the district court’s decision granting the state Attorney General’s motion to intervene to modify sealing orders. (Def. Mot. 11 at 14). Maxwell’s reliance on *Palmieri* is of no avail. There, the Second Circuit held that the district court erred by not expressly finding that the state had shown improvidence, extraordinary circumstances, or compelling need before modifying the sealing orders in a civil case. *Palmieri*, 779 F.2d at 862, 866. By contrast, here Chief Judge McMahon made this explicit finding.

Judge Netburn, on the other hand, rejected the Government’s arguments for exceptional circumstances and compelling need as “unpersuasive” under the *Martindell* standard. (Def. Mot. 3, Ex. H at 6). Maxwell argues that Judge Netburn was “exactly right” in her analysis of whether exceptional circumstances existed, but ignores the fact that Chief Judge McMahon made contrary findings on this point. That two neutral judicial officers were presented with the facts, analyzed the law, and reached varying conclusions based on different findings shows that there are guardrails in place to ensure compliance with *Martindell*. In other words, the Government in no

way circumvented *Martindell*; rather, the Government sought court approval to enforce a subpoena and then followed the directives it received.³⁷

Most critically, however, even if the Government's motion did not satisfy *Martindell*, Maxwell offers no legal authority for the proposition that suppression is the proper remedy.³⁸ Indeed, none of the Second Circuit cases applying *Martindell* contemplate suppression as a remedy. See, e.g., *In re Grand Jury Subpoena Duces Tecum Dated Apr. 19, 1991*, 945 F.2d at 1224 (remanding for findings “on whether the protective order was improvidently granted or whether the government had made a showing of exceptional circumstances or a compelling need”); *Palmieri*, 779 F.2d at 862 (reversing district court’s modification of protective orders where district court did not make an “express finding” of improvidence, extraordinary circumstances, or compelling need and “remand[ing] for further proceedings consistent with this opinion”).

³⁷ Maxwell asks this Court to review and reverse Chief Judge McMahon’s exercise of her discretion in modifying the protective order, because she disagrees with Chief Judge McMahon’s analysis of the *Martindell* factors. Although Chief Judge McMahon’s order modifying the civil protective order was not entered on the civil docket, that order, along with the Government’s application and related materials, were produced to the defense on or about August 12, 2020. As a result, Maxwell could have sought review of Chief Judge McMahon’s order in the Second Circuit. See Fed. R. App. P. 4(a)(6). Maxwell asks this Court to second-guess a coequal district court’s decision to modify a protective order. Putting aside the question of whether this Court even has the authority to do so, it should in any event decline Maxwell’s invitation to act as a reviewing court to Chief Judge McMahon’s decision, which was made in her “sound discretion.” *In re “Agent Orange” Prod. Liab. Litig.*, 821 F.2d at 147.

³⁸ To the extent that Maxwell seeks suppression of documents created prior to the entry of the protective order (or created after its entry but not subject to its protections), that aspect of her motion should be denied. A significant amount of the materials provided in response to the subpoena included such pre-existing documents not created in reliance on a protective order, which do not trigger the *Martindell* presumption in the Second Circuit, see *TheStreet.com*, 273 F.3d at 234-235; *Davis*, 702 F.2d at 422. Maxwell’s arguments also do not extend to transcripts of other individuals’ depositions, who were not parties to the protective order.

2. Maxwell's Fourth Amendment Claim Fails

Maxwell's Fourth Amendment motion is premised on a wholly unsupported expansion of the law. Because Maxwell lacked a privacy interest in the files of a third party law firm who represented her adversary in civil litigation, and because the subpoena was entirely lawful, she cannot make out a Fourth Amendment violation. Moreover, even if Maxwell had standing to assert this claim, it would nonetheless fail because the Government relied in good faith on a judicial order permitting compliance with its subpoena.

a. Maxwell Has Not Established Standing

i. Applicable Law

The Fourth Amendment protects the “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend IV. “The basic purpose of this Amendment . . . is to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials.” *Carpenter v. United States*, 138 S. Ct. 2206, 2213 (internal quotation marks and citation omitted). “It has been clear for a generation that ‘Fourth Amendment rights are personal rights . . . [that] may not be vicariously asserted.’” *United States v. Haqq*, 278 F.3d 44, 47 (2d Cir. 2002) (quoting *Rakas v. Illinois*, 439 U.S. 128, 133-34 (1978)). Accordingly, a defendant’s Fourth Amendment rights “are violated only when the challenged conduct invaded *his* legitimate expectation of privacy rather than that of a third party.” *United States v. Payner*, 447 U.S. 727, 731 (1980) (emphasis in original); *see also United States v. Villegas*, 899 F.2d 1324, 1333 (2d Cir. 1990). Ultimately, the Fourth Amendment inquiry is “whether [a] defendant has established a legitimate expectation of privacy in the area searched.” *United States v. Chuang*, 897 F.2d 646, 649 (2d Cir. 1990) (citations omitted). This threshold question involves two separate inquiries: (1) whether a defendant has demonstrated a subjective

expectation of privacy in the places and items that were searched; and (2) whether that expectation was one that society accepts as reasonable. *Id.* It is axiomatic that “[t]he proponent of a motion to suppress has the burden of establishing that his own Fourth Amendment rights were violated by the challenged search or seizure.” *Rakas*, 439 U.S. at 130, n.1; *see also Rawlings v. Kentucky*, 448 U.S. 98, 104 (1980).

Under the third party doctrine, the Fourth Amendment “does not prohibit the obtaining of information revealed to a third party and conveyed by [the third party] to Government authorities.” *United States v. Miller*, 425 U.S. 435, 443 (1976). The Supreme Court has long held that “a person has no legitimate expectation of privacy in information he voluntarily turns over to third parties,” *Smith v. Maryland*, 442 U.S. 735, 743-44 (1979), “even if the information is revealed on the assumption that it will be used only for a limited purpose,” *Miller*, 425 U.S. 435, at 443. Exceptions to the applicability of the third party doctrine are narrow. For example, in *Carpenter*, 138 S. Ct. at 2220, the Supreme Court declined to extend the third party doctrine to cell site location information, holding that “a warrant is required in the rare case where the suspect has a legitimate privacy interest in records held by a third party.” 138 S. Ct. at 2222. However, the Court stressed that its holding was “a narrow one,” with specific consideration given to “the unique nature of cell phone location information,” *id.* at 2220, which “provides an intimate window into a person’s life,” *id.* at 2217.

“The law is clear that the burden on the defendant to establish [Fourth Amendment] standing is met only by sworn evidence, in the form of affidavit or testimony, from the defendant or someone with personal knowledge.” *United States v. Montoya-Eschevarria*, 892 F. Supp. 104, 106 (S.D.N.Y. 1995) (citations omitted); *see also United States v. Ulbricht*, No. 14 Cr. 68 (KBF), 2014 WL 5090039, at *6 (S.D.N.Y. Oct. 10, 2014); *Rakas*, 439 U.S. at 130 n.1.

ii. Discussion

Maxwell cannot assert a Fourth Amendment claim because she had no legitimate expectation of privacy in the deposition transcripts or other materials she designated as confidential under the protective order. The materials were held by a third party law firm that represented her adversary in the civil suit. *See Smith*, 442 U.S. at 743-44 (“a person has no legitimate expectation of privacy in information he voluntarily turns over to third parties”); *Miller*, 425 U.S. at 443 (no legitimate expectation of privacy in materials held by a third party “even if the information is revealed on the assumption that it will be used only for a limited purpose”); *Carpenter*, 138 S. Ct. at 2220 (“We do not disturb the application of *Smith* and *Miller* . . .”). Maxwell cites no authority for the proposition that she has standing to challenge a judicially approved grand jury subpoena directed at a third party law firm, because there is none.

Maxwell points to the fact that the materials were designated as confidential under the protective order, but that reliance is misplaced. (Def. Mot. 11 at 6-8). *Martindell* by its own terms contemplates the modification of a protective order in a civil action. *See, e.g., Andover Data Servs.*, 876 F.2d at 1083 (“It is well-settled here and elsewhere . . . that a Rule 26(c) protective order may be overturned or modified based on a finding of improvidence, extraordinary circumstances or compelling need.”). And with respect to the specific protective order at issue, Chief Judge McMahon found that because the order “plainly gives the court the power to enter an order compelling disclosure to anyone—law enforcement included—Maxwell could not reasonably have relied on the absence of automatic permission for such disclosure to shield anything she said or produced from a grand jury’s scrutiny.” (Def. Mot. 3, Ex. G at 18-19); *see also* Def. Mot. 3, Ex. A at ¶ 5 (“CONFIDENTIAL INFORMATION[] shall not, without the consent of the party producing it or further Order of the Court, be disclosed[.]”) (internal quotation

marks omitted) (emphasis added)); *In re “Agent Orange” Prod. Liab. Litig.*, 821 F.2d at 145 (“It is undisputed that a district court retains the power to modify or lift protective orders that it has entered.”). It also bears noting that *Martindell* and its progeny do not discuss law enforcement applications in Fourth Amendment terms.

In an effort to avoid the application of the third party doctrine, Maxwell contends that she did not in fact voluntarily share anything in the civil suit, and that “every other circumstance” supported her “expectation that her deposition transcripts would be private.” (Def. Mot. 11 at 9). Neither argument withstands scrutiny. As an initial matter, the facts of this case are far removed from the “narrow” circumstances in which the Supreme Court has found an exception to the third party doctrine. For example, the *Carpenter* Court, while stressing that its holding was a “narrow one,” 138 S. Ct. at 2220, held that “[g]iven the unique nature of cell phone location records,” which provide a “intimate window into a person’s life,” “the fact that the information is held by a third party does not by itself overcome the user’s claim to Fourth Amendment protection.” *Id.* at 2217; *see also Zietzke v. United States*, 426 F. Supp. 3d 758, 768 (W.D. Wash. 2019) (“The Court . . . will extend *Carpenter* to new circumstances only if they directly implicate the privacy concerns that animated the majority. [T]he majority was overwhelmingly concerned with ‘Carpenter’s anticipation of privacy in his physical location.’ In other words, *Carpenter* was about surveillance.” (internal citation omitted)).

There can be no serious argument that the facts of this case, or the materials obtained pursuant to the subpoena issued here, revealed Maxwell’s physical location over a period of time or are otherwise in any way analogous to the narrow category of information contemplated by the majority in *Carpenter*. To the extent the defendant argues that her deposition transcripts implicate such interests because she “did not ‘voluntarily convey’ her testimony to Giuffre,” (Def. Mot. 11

at 10), the Court should reject the defendant's efforts to twist *Carpenter*'s exception to the third party rule beyond recognition. The defendant was not compelled to participate in the deposition or to answer questions without invoking her Fifth Amendment right against self-incrimination; she voluntarily chose to do so. Even if she chose to do so in reliance on the protective order, that protective order was subject to modification under well-settled case law and by its own terms. Contrary to the defendant's claims (Def. Mot. 11 at 10), she assumed the risk that the deposition transcripts would divulged to the Government. *See, e.g., United States v. Schaefer*, No. 17 Cr. 400 (HZ), 2019 WL 267711, at *5 (D. Or. Jan. 17, 2019) (declining to apply *Carpenter* where government obtained defendant's eBay transactions without a warrant as defendant "assumed the risk that [eBay] would reveal to police the purchases he made" and defendant "did not have a reasonable expectation of privacy in the records of his purchases").

Because Maxwell had no legitimate Fourth Amendment privacy interest in the materials in Boies Schiller's possession, she has no standing to challenge their seizure, and no warrant was required to obtain those materials. Her motion should be rejected on this ground alone.

b. The Government Acted in Good Faith

Even if the defendant had standing to bring this motion, it still fails because the Government only obtained these materials after obtaining a court order authorizing it to do so. The Government accordingly acted in good faith when it acted pursuant to that judicial order.

i. Applicable Law

Under the so-called "good faith" exception, the exclusionary rule and its remedy of suppression do not apply "when the Government 'act[s] with an "objectively reasonable good-faith belief that their conduct is lawful.'" *United States v. Zoghates*, 901 F.3d 137, 143 (2d Cir. 2018) (quoting *Davis v. United States*, 564 U.S. 229, 238 (2011) (internal quotation marks

omitted)). “As the rule seeks to deter future Fourth Amendment violations, the Supreme Court advises district courts to only suppress evidence where it serves such a purpose.” *United States v. Williams*, No. 10 Cr. 622 (ADS), 2018 WL 4623017, at *4 (E.D.N.Y. Sept. 26, 2018) (internal quotation marks and citations omitted). “[T]he exclusionary rule is not an individual right and applies only where it results in appreciable deterrence.” *United States v. Eldred*, 933 F.3d 110, 118 (2d Cir. 2019) (quoting *Herring v. United States*, 555 U.S. 135, 141 (2009)); see also *Herring*, 555 U.S. at 144 (concluding that “[t]o trigger the exclusionary rule, police conduct must be sufficiently deliberate that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the price paid by the justice system.”). As a result, exclusion should be a “last resort” rather than a “first impulse.” *United States v. Rosa*, 626 F.3d 56, 64 (2d Cir. 2010) (internal quotation marks and citation omitted). The exclusionary rule should be used only where law enforcement “‘exhibit[s] deliberate, reckless, or grossly negligent disregard for Fourth Amendment rights.’” *United States v. Raymonda*, 780 F.3d 105, 117-18 (2d Cir. 2015) (quoting *United States v. Stokes*, 733 F.3d 438, 443 (2d Cir. 2013)); see also *United States v. Green*, 981 F.3d 945, 957 (11th Cir. 2020) (“It follows that when officers act with ‘an objectively reasonable good-faith belief that their conduct is lawful’—i.e., by acting in reasonable reliance on a warrant, statute, or court order—the exclusionary rule does not apply because there is little, if any, deterrence benefit in such circumstances.” (citations omitted)).

In the context of search warrants, suppression will generally not be warranted where the evidence at issue was “obtained in objectively reasonable reliance on a subsequently invalidated search warrant.” *United States v. Leon*, 468 U.S. 897, 922 (1984). As a result, although the burden is on the Government to establish good faith, “[s]earches pursuant to a warrant will rarely require any deep inquiry into reasonableness, for a warrant issued by a magistrate normally suffices to

establish that a law enforcement officer has acted in good faith in conducting the search.” *Id.* (internal quotation marks and citations omitted); *see also Golino v. City of New Haven*, 950 F.2d 864, 870 (2d Cir. 1991) (noting that the “issuance of a warrant by a neutral magistrate, which depends on a finding of probable cause, creates a presumption that it was objectively reasonable for the officers to believe that there was probable cause”). Indeed, the good faith exception does not apply only in four narrow circumstances:

(1) where the issuing magistrate has been knowingly misled; (2) where the issuing magistrate wholly abandoned his or her judicial role; (3) where the application is so lacking in indicia of probable cause as to render reliance upon it unreasonable; and (4) where the warrant is so facially deficient that reliance upon it is unreasonable.

United States v. Moore, 968 F.2d 216, 222 (2d Cir. 1992) (citing *Leon*, 468 U.S. at 923). The good faith exception analysis applies in the context of court orders. *See, e.g., Zodhiates*, 901 F.3d at 143 (applying good faith analysis in Fourth Amendment challenge to cell phone location information obtained by subpoena issued pursuant to 18 U.S.C. § 2703(c)(2)); *United States v. Serrano*, No. 13 Cr. 58 (KBF), 2014 WL 2696569, at *7 (S.D.N.Y. June 10, 2014) (finding good faith exception would apply to cell site information obtained pursuant to a subpoena authorized by magistrate judge pursuant to 18 U.S.C. § 2703(d)); *United States v. Ashburn*, 76 F. Supp. 3d 401, 406, 414-18 (E.D.N.Y. 2014) (applying *Leon* to § 2703(d) orders for historical cell-site data obtained and finding that the good faith exception applied).

ii. Discussion

The exclusionary rule and its remedy of suppression should not apply here, as the Government issued a grand jury subpoena; sought the materials after applying to the district court for an order to modify the civil protective order; and only obtained the materials after the district

court modified the protective order and issued a 26-page decision. The Government acted in reasonable reliance on the district court's decision.

The defendant argues that the Government misled the Court when it “claimed not to know what was in Boies Schiller’s file and that Boies Schiller had no role in instigating the investigation of Maxwell.” (Def. Mot. 11 at 1). The defendant’s claims are both factually inaccurate and meritless.

First, the Government did not mislead Chief Judge McMahon about its contacts with Boies Schiller. As an initial matter, Maxwell’s argument is premised solely on her use of selective snippets from a lone *Daily News* Article that is premised, in meaningful part, on anonymous sources and hearsay. As the factual background set forth above—which is corroborated by notes and correspondence produced alongside this brief—makes clear, David Boies and Boies Schiller played no role in initiating, let alone “fomenting” the Government’s investigation. That investigation was opened more than two and a half years after the last known contact between any lawyer associated with any civil counsel for Giuffre and, in any event, was initially focused on Epstein, not this defendant. As detailed above, the USAO-SDNY opened the instant investigation in late November 2018 shortly after the *Miami Herald* published a series of articles about Epstein. AUSA-1 was not involved in that decision, which in any event had nothing to do with a meeting that had taken place nearly three years prior.³⁹ (Ex. 4 at 6).

³⁹ Maxwell repeatedly claims that Boies Schiller urged AUSA-1 to open an investigation of Epstein and Maxwell, (Def. Mot. 3 at 8), but that allegation, which is supported by nothing aside from the above-referenced media report, is incorrect. While AUSA-1 did meet with the three attorneys in February 2016, she understood the attorneys to be focused on Epstein, and not on Epstein and Maxwell as a “duo.” (Ex. 4 at 1, 4). The presentation to AUSA-1 focused on urging an investigation into Epstein with only passing references to Maxwell. Simply put, the pitch was to investigate Epstein, not Maxwell.

The defendant repeatedly argues that the Government’s failure to mention AUSA-1’s prior contact with Boies Schiller in 2016 was a misrepresentation that led to the modification of the protective order. The argument, which relies principally on hyperbolic rhetoric, is simply incorrect. As an initial matter, the Government did not insist, contrary to Maxwell’s twisted reading of the transcript, that “there had been no contact whatsoever” between Boies Schiller and the Government at any time prior to the Government opening its investigation. (Def. Mot. 3 at 1). Instead, Chief Judge McMahon’s question was more specific: referencing *Chemical Bank* and the desire to avoid “a *Chemical Bank* kind of situation,” Chief Judge McMahon asked about contacts between the two parties “prior to the issuance of the subpoena *on the subject of your investigation*.” (Def. Mot. 3, Ex. E at 2 (emphasis added); *see also* Def. Mot. 3 at 7 (omitting the italicized portion of the question)). In response, the Government described accurately its communications with Boies Schiller that had occurred in the time period surrounding the opening of its investigation and the issuance of the subpoena. Additionally, and in light of the Government’s prior arguments to Chief Judge McMahon relating to *Chemical Bank*,⁴⁰ the Government attempted to address the misconduct at issue in that case: namely the production of confidential documents without seeking modification of a protective order by confirming that, here, no such production had yet occurred. (Def. Mot. 3, Ex. E at 2) (noting that Boies Schiller “generally advised us that they believed there

⁴⁰ *See, e.g.*, Exs. 8 & 9 at 2-3 (discussing *Chemical Bank* as rejecting a contempt request where a party “compl[ied] with a grand jury subpoena despite the existence of a protective order” and focusing arguments on the nature of the production of documents); (Def. Mot. 3, Ex. D at 15) (the Government describing *Chemical Bank* as “essentially say[ing]: You should have asked, but of course this is fine for you to disclose this information to the government based on the validly issued grand jury subpoena”); *cf. (id.* at 4 (Chief Judge McMahon describing *Chemical Bank* as saying “the proper procedure [for the production of documents] is for somebody to make a motion to be relieved from the terms of the protective order”), 20 (Chief Judge McMahon stating that “in the *Chemical Bank* case, it all was ex post facto and it all happened”)).

was a protective order that would govern at least some of the materials, and that is why we ultimately made the application to the Court.”)).

While the Government appreciates, with the benefit of hindsight, that an answer that had also referenced the February 2016 meeting (and the fact that USAO-SDNY took no action as a result of that meeting) would have provided additional context—and would have further reinforced that this was not a “*Chemical Bank* situation”—as noted above, the Government’s response accurately described its contacts with Boies Schiller as relevant to “your investigation” and the issuance of the subpoena at hand. Indeed, there is no reason to believe that a description of the February 2016 meeting would have been material to Chief Judge McMahon’s analysis of whether she was facing a “*Chemical Bank* kind of situation.” (Def. Mot. 3, Ex. E at 2).

In *Chemical Bank*, counsel for a civil party approached the Manhattan District Attorney’s Office “suggesting that it had evidence of criminal violations relating to the case.” 154 F.R.D. at 93. In response, a grand jury subpoena was issued and “confidential documents were produced by the defendant without complying with any of the specific procedures or exceptions provided in the [confidentiality] orders.” *Id.* Here, by contrast, the Government accurately conveyed to Chief Judge McMahon the opening of its investigation in late 2018, the reason it made contact with Boies Schiller shortly thereafter and served a subpoena in February 2019, and that no documents governed by the protective order had yet been produced. Aside from rank speculation loosely premised on an anonymously sourced news report, the defendant offers nothing to support her assertion that “Boies Schiller was *instrumental* in fomenting the Maxwell prosecution” (Def. Mot. 3 at 2) (emphasis in original), or that AUSA-1’s February 2016 meeting with Boies Schiller (as it actually occurred) undercut the accuracy of the Government’s representations to Chief Judge McMahon, or played any role in the Government opening its investigation in November 2018.

Second, the Government did not misrepresent the extent of its knowledge of the contents of Boies Schiller's files. As the Government correctly represented to the court, the Government had "either little or no additional information than the Court does in terms of what materials there are [and] who was deposed." (Def. Mot. 3, Ex. D at 17). In support of her argument, Maxwell cites again to the *Daily News* Article, which reports that "after Maxwell's two depositions, David Boies himself apparently approached the government in the summer of 2016, asking 'if the Southern District would consider charging Maxwell with perjury'" (Def. Mot. 3 at 8). But the Government has uncovered no evidence that such a meeting ever occurred. AUSA-1 does not recall ever speaking with or meeting David Boies in her life. (Ex. 4 at 4). Moreover, AUSA-1 does not recall being asked if the USAO-SDNY would consider charging Maxwell with perjury (*id.* at 5), and while notes of the February 2016 meeting refer to the existence of depositions generally, there can be no question Chief Judge McMahon appreciated the Government's general understanding that such transcripts would be part of the civil litigation file. (Def. Mot. 3, Ex. G at 21). Simply put, there is no evidence that the Government had any significant knowledge of the contents of Boies Schiller's files, or that the Government's representations to Chief Judge McMahon were incorrect.

In sum, Maxwell has failed to put forth any evidence that the Government misled Chief Judge McMahon, and as such, the good faith exception applies. To the contrary, the record before the Court demonstrates that the Government directly responded to Chief Judge McMahon's question and accurately described the contacts between Boies Schiller and the USAO-SDNY in connection with the investigation, the Government's lack of knowledge of the contents of that file, and the fact that no protected materials had been produced in violation of the protective order. Upon receiving a court order issued by a Chief United States District Judge who had carefully

considered the Government's application and then issued a lengthy opinion ruling on that application, the Government was entirely reasonable in its understanding that the order was lawful. It was therefore similarly reasonable for the Government to obtain materials from Boies Schiller in response to the subpoena that had been analyzed and blessed by a court order. The Government acted with an "objectively reasonable good-faith belief" that its conduct was lawful and in reasonable reliance on the district court's order. *Zodhiates*, 901 F.3d at 143 (internal quotation marks and citations omitted).

c. Suppression of Certain Materials Would Be Improper Under the Inevitable Discovery Doctrine

To the extent materials the Government obtained from Boies Schiller have now been unsealed and posted on the public docket, there is no basis to suppress such materials because the Government would have inevitably been able to access them upon unsealing.

i. Applicable Law

Under the inevitable discovery doctrine, "evidence that was illegally obtained will not be suppressed 'if the government can prove that the evidence would have been obtained inevitably' even if there had been no statutory or constitutional violation." *United States v. Roberts*, 852 F.2d 671, 675-76 (2d Cir. 1988) (quoting *Nix v. Williams*, 467 U.S. 431, 447 (1984)). When a claim of inevitable discovery is raised, the court must "determine, viewing affairs as they existed at the instant before the unlawful search occurred, what *would have happened* had the unlawful search never occurred." *Stokes*, 733 F.3d at 444 (citation omitted) (emphasis in original); *see also United States v. Heath*, 455 F.3d 52, 55 (2d Cir. 2006) (The application of the inevitable discovery doctrine "turns on a central question: Would the disputed evidence inevitably have been found through legal means 'but for' the constitutional violation? If the answer is 'yes,' the evidence seized will not be excluded.").

“The government bears the burden of proving inevitable discovery by a preponderance of the evidence.” *Stokes*, 733 F.3d at 444 (citing *Nix*, 467 U.S. at 444). This requires establishing, ““with a high level of confidence, that each of the contingencies necessary to the legal discovery of the contested evidence would be resolved in the government’s favor.”” *Id.* (quoting *Heath*, 455 F.3d at 60). As the Supreme Court has explained, if the Government can establish that the evidence inevitably would have been discovered by lawful means, “then the deterrence rationale [for the exclusionary rule] has so little basis that the evidence should be received.” *Nix*, 467 U.S. at 444.

ii. Discussion

Even if the Court were to find that there had been some constitutional violation in the Government obtaining a modification of the protective order—which it should not—the question in an inevitable discovery analysis is whether the Government would inevitably have found the disputed evidence. The answer is yes, at least as to some of the evidence, including the April 2016 deposition that forms the basis of Count Five and part of the July 2016 deposition that forms the basis of Count Six.⁴¹

⁴¹ In January 2021, the defendant asked Judge Preska to reconsider her order unsealing certain portions of her testimony on the basis that, among other things, public release of the section would make it more difficult for Maxwell to suppress the testimony as evidence against her at her criminal trial. On February 8, 2021, Judge Preska “decline[d] Ms. Maxwell’s invitation to reconsider its order” and noted that the defendant had both filed a suppression motion and available tools under the Federal Rules of Evidence and Procedure. (*See* 15 Civ. 7433 (LAP), Dkt. No. 1211 at 3, 5). The portion of the July 2016 deposition transcript that forms the basis of Count Six that has been unsealed relates to the defendant denying that she has given a massage to anyone, including Epstein or Minor Victim-2. (*See* 15 Civ. 7433 (LAP), Dkt. No. 1212-1 at 113). The fact that the defendant argued against unsealing the transcript by pointing to her suppression argument is irrelevant. Judge Preska determined that the public’s First Amendment right of access outweighed the defendant’s interests. If the Government had not modified the protective order and charged the defendant with perjury based on the deposition transcript, that argument would have been unavailable and the balance would have tipped still more in favor of public access, leading to the transcript’s inevitable discovery.

The defendant asks the Court for a drastic remedy, namely suppression of *all* evidence the Government obtained pursuant to the subpoena, as well as the dismissal of Counts Five and Six. In so doing, the defendant seeks a windfall to which she is not entitled based on unprecedented claims that ignore the facts and the law. Suppression of all materials the Government obtained pursuant to the subpoena is unwarranted here, particularly where certain of the materials have been subsequently unsealed by Judge Preska in the underlying civil litigation, including Maxwell's April 2016 deposition transcript. (*See* 15 Civ. 7433 (LAP), Dkt. No. 1077). The Second Circuit affirmed Judge Preska's ruling in October 2020, finding that the Court "correctly held that the deposition materials are judicial documents to which the presumption of public access attaches, and did not abuse its discretion in rejecting Maxwell's meritless arguments that her interests superseded the presumption of access." *Giuffre v. Maxwell*, No. 20-2413 (2d Cir.), (Dkt. No. 140-1 at 3).⁴² On October 22, 2020, the defendant's April 2016 deposition was publicly filed. (*See* 15 Civ. 7433 (LAP), Dkt. No. 1137-13). In February 2021, a redacted version of the defendant's July 2016 deposition was publicly filed. (*See* 15 Civ. 7433 (LAP), Dkt. No. 1212-1). In other words, had the Government not obtained an order modifying the protective order, the Government inevitably would have discovered and obtained, at a minimum, the defendant's April 2016 deposition transcript and a portion of the July 2016 transcript that form the basis of the charges in Counts Five and Six.

⁴² Relatedly, the defendant moved to modify the *criminal* protective order in order to use confidential criminal discovery materials in filings she intended to submit in civil litigation. The defendant raised this precise point—that if the Court ultimately decided that it was inappropriate for the Government to proceed by subpoena, the Government would claim inevitable discovery. (Dkt. No. 54 at 3). The defendant offered no coherent explanation of how the criminal discovery materials could have any conceivable impact on the issues pending in civil litigation. She cited no case law suggesting that, for example, the possibility of an inevitable discovery argument by the Government should foreclose unsealing in a civil case. This Court rejected the defendant's motion to modify the criminal protective order. (Dkt. No. 51). The Second Circuit also dismissed the defendant's appeal for want of jurisdiction. (Dkt. No. 71).

3. The Defendant's Motion to Suppress Evidence Obtained Pursuant to the Subpoena Under the Fifth Amendment Is Without Merit

The defendant's motion to suppress all evidence obtained pursuant to the subpoena on Fifth Amendment grounds fails for multiple, independent reasons. As an initial matter, Boies Schiller is not the Government and was not acting as an agent of the Government when it deposed the defendant or otherwise litigated the civil case against her. That the defendant may regret her choice to respond to Boies Schiller's questions during two depositions instead of invoking her privilege against self-incrimination does not transform that choice into a Fifth Amendment violation.

a. Applicable Law

i. The Fifth Amendment – Generally

The Fifth Amendment provides in pertinent part: "No person . . . shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend. V. To establish a Fifth Amendment violation, an individual must "demonstrate the existence of three elements: 1) compulsion, 2) a testimonial communication, and 3) the incriminating nature of that communication." *In re Grand Jury Subpoena*, 826 F.2d 1166, 1168 (1987); *see also, e.g., In Re Three Grand Jury Subpoenas Jan. 5, 1988*, 847 F.2d 1024, 1028 (2d Cir. 1988).

It is "axiomatic that the Amendment does not automatically preclude self-incrimination, whether spontaneous or in response to questions put by government officials." *United States v. Washington*, 431 U.S. 181, 186 (1977). "Indeed, far from being prohibited by the Constitution, admissions of guilt by wrongdoers, if not coerced, are inherently desirable." *Id.* at 187. "[T]he Fifth Amendment proscribes only self-incrimination obtained by a 'genuine compulsion of testimony.'" *Id.* (quoting *Michigan v. Tucker*, 417 U.S. 433, 440 (1974)); *see also Washington*, 431 U.S. at 187 ("Absent some officially coerced self-accusation, the Fifth Amendment privilege is not violated by even the most damning admissions."). Nor does the Constitution "prohibit every

element which influences a criminal suspect to make incriminating admissions.” *Id.* The question is not whether a witness was encouraged to speak, but whether his “free will,” when he spoke, “was overborne.” *Id.* at 188; *see also, e.g., United States v. Corbett*, 750 F.3d 245, 253 (2d Cir. 2014).

It follows that the Government need not inform a witness of the nature of its investigation, *see United States v. Okwumabua*, 828 F.2d 950, 953 (2d Cir. 1987), much less his individual status in the investigation, *see Washington*, 431 U.S. at 189 & 190 n.6. The Constitution does not “require that the police supply a suspect with a flow of information to help him calibrate his self-interest in deciding whether to speak or stand by his rights.” *Colorado v. Spring*, 479 U.S. 564, 576-77 (1987) (internal quotation marks omitted); *see also, e.g., id.* at 577 (there is no requirement that law enforcement give information that might affect “the wisdom” of speaking). Nor does the Constitution require that someone be questioned only in the manner most likely to ensure that he gives the decision whether to speak careful thought. *See, e.g., United States v. Roberts*, 660 F.3d 149, 157 (2d Cir. 2011) (“the Fifth Amendment does not protect against hard choices” (internal quotation marks omitted)); *United States v. Mullens*, 536 F.2d 997, 1000 (2d Cir. 1976) (there is a difference between “those choices which are physically or psychologically coerced and those which are merely difficult”).

In short, the Fifth Amendment is only violated by “government misconduct” that is “coercive.” *Colorado v. Connelly*, 479 U.S. 157, 163 (1986); *see also Oregon v. Elstad*, 470 U.S. 298, 312 (1985) (Fifth Amendment prohibits “coercion” effected “by physical violence or other deliberate means calculated to break the suspect’s will”).

ii. The Fifth Amendment – Act of Production Privilege

The act of production privilege is a form of the Fifth Amendment privilege pertaining to the production of materials. “[A]n individual may claim an act of production privilege to decline

to produce documents, the contents of which are not privileged, where the act of production is, itself, (1) compelled, (2) testimonial, and (3) incriminating.” *In re Three Grand Jury Subpoenas Duces Tecum Dated Jan. 29, 1999*, 191 F.3d 173, 178 (2d Cir. 1999).

Consistent with these requirements, the privilege only “prohibits the compelled disclosure of documents when the act of production has independent communicative aspects—such as an admission that the documents exist, that the subject possesses or controls the documents, that the documents are authentic, or that the subject believes the documents are responsive to the subpoena.” *In re Various Grand Jury Subpoenas*, 924 F. Supp. 2d 549, 552 (S.D.N.Y. 2013), *aff’d*, 579 F. App’x 37 (2d Cir. 2014); *see also Fisher v. United States*, 425 U.S. 391, 408 (1976). It follows that the privilege does not apply when “[t]he existence and location of the [sought] papers are a foregone conclusion and the [compelled individual] adds little or nothing to the sum total of the Government’s information by conceding that he in fact has the papers.” *Id.* at 411; *see also In re Grand Jury Subpoena Duces Tecum Dated Oct. 29, 1992*, 1 F.3d 87, 93 (2d Cir. 1993); *Madanes v. Madanes*, 186 F.R.D. 279, 284 (S.D.N.Y. 1999) (“[E]ven if documents contain incriminating information, requiring a person to produce them does not implicate the Fifth Amendment unless the act of production is itself testimonial in nature and incriminating to the person making the disclosure.”).

iii. The Fifth Amendment – When Private Action Is Deemed Government Action

As discussed above, “[t]he sole concern of the Fifth Amendment . . . is governmental coercion.” *Connelly*, 479 U.S. at 170. “[T]he Fifth Amendment privilege is not concerned ‘with moral and psychological pressures to confess emanating from sources other than official coercion.’” *Id.* (quoting *Elstad*, 470 U.S. at 305). For this reason, even “[t]he most outrageous

behavior by a private party seeking to secure evidence against a defendant does not make that evidence inadmissible.” *Connelly*, 479 U.S. at 166.

This does not mean that only action undertaken directly by the Government may violate the Fifth Amendment (or another right). In certain circumstances, a private entity may be deemed to be acting as a government agent. *See United States v. Stein*, 541 F.3d 130, 146 (2d Cir. 2008) (“Actions of a private entity are attributable to the State if there is a sufficiently close nexus between the State and the challenged action of the entity so that the action of the latter may be fairly treated as that of the State itself.” (internal quotation marks and ellipsis omitted)).

However, this standard “is not satisfied when the state merely approves of or acquiesces in the initiatives of the private entity, or when an entity is merely subject to governmental regulation.” *Id.* (internal quotations marks and citations omitted; alterations incorporated)). Nor is it sufficient that a non-government entity chooses to cooperate with a government investigation or has its own parallel investigation. *See id.* at 150. Non-government action is attributable to the government “only when it can be said that the State is *responsible* for the specific conduct of which the [defendant] complains.” *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982) (emphasis in original). “Such responsibility is normally found when the State ‘has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State.’” *Stein*, 541 F.3d at 147 (quoting *Blum*, 457 U.S. at 1004); *see also Flagg v. Yonkers Sav. & Loan Ass’n*, 396 F.3d 178, 187 (2d Cir. 2005).

b. Discussion

As an initial matter, the defendant’s Fifth Amendment claim fails because she has not demonstrated state action. Boies Schiller is not an agent of the Government and has not been at any time during the course of the Government’s investigation, including when it initiated the civil

lawsuit against the defendant or took her deposition years before the Government initiated its own investigation. The defendant offers no evidence to the contrary, and there is no reason to believe, on this record, that the Government in any way controlled Boies Schiller when it litigated a civil case against the defendant. As such, the Fifth Amendment does not apply.

The defendant's claim further fails because without coercion or compulsion, there is no Fifth Amendment violation. *See Minnesota v. Murphy*, 465 U.S. 420, 431 (1984) (rejecting claim that a "failure to inform [the defendant] of the Fifth Amendment privilege barred use of his confession at trial"); *United States v. Mitchell*, 966 F.2d 92, 100 (2d Cir. 1992) ("Inculpatory statements are not involuntary when they result from a desire to cooperate, or from a defendant's ignorance of, or inattention to, his right to remain silent."); *United States v. Mast*, 735 F.2d 745, 750 (2d Cir. 1984) (same). The defendant implicitly argues that she only testified under oath in the civil matter because she thought she would not be held to that oath. In other words, had she known that she would be subject to the penalties of perjury, she would have invoked her Fifth Amendment right. But the defendant's misguided expectation that she would face no consequences cannot be said to coerce speech. The defendant, represented by able counsel, voluntarily chose to waive her Fifth Amendment rights and testify under oath. And she chose to do so in connection with civil depositions that occurred over two years before the Government opened its investigation. The circumstances surrounding that decision come nowhere near the type of coercion that rises to the level of a Fifth Amendment violation. *See, e.g., United States v. Ash*, 464 F. Supp. 3d 621, 627-30 (S.D.N.Y. 2020) (finding suppression of defendant's phone unwarranted where defendant complied with former employer's request to return the phone because defendant was not coerced into doing so, and rejecting defendant's argument that the

employer was required to warn her that it might produce the phone to the government, even assuming *arguendo* that that employer's actions were attributable to the government).

The defendant's claim that her act of production privilege was somehow violated similarly fails. Counsel cites *Boyd v. United States*, 116 U.S. 616 (1886) for the proposition that "a compulsory production of the private books and papers . . . [also] is compelling . . . him to be a witness against himself, within the meaning of the fifth amendment." (Det. Mot. 11 at 15) (quoting *Boyd*, 116 U.S. at 634-35). In *In re Grand Jury Subpoena Duces Tecum Dated Oct. 29, 1992*, the Second Circuit ruled that the Fifth Amendment does not protect the contents of private papers that are not business documents, and also noted that "[s]everal aspects of the *Boyd* decision did not endure." 1 F.3d at 90 (citing *Fisher v. United States*, 425 U.S. 391 (1976)).

Further, the Fifth Amendment does not protect against being compelled to speak and then speaking falsely. "[E]ven if an individual's perjured testimony is improperly procured because of government misconduct, that testimony may still be used to prosecute that defendant for perjury." *United States v. Olivieri*, 740 F. Supp. 2d 423, 425 (S.D.N.Y. 2010) (citing *United States v. Remington*, 208 F.2d 567 (2d Cir. 1953); *United States v. Winter*, 348 F.2d 204 (2d Cir. 1965)); *see also United States v. Wong*, 431 U.S. 174, 180 (1977) ("[P]erjury is not a permissible way of objecting to the Government's questions. . . . Indeed, even if the Government could, on pain of criminal sanctions, compel an answer to its incriminating questions, a citizen is not at liberty to answer falsely."); *Bryson v. United States*, 396 U.S. 64, 72, 90 (1969) (rejecting challenge to false statement prosecution; "[I]t cannot be thought that as a general principle of our law a citizen has a privilege to answer fraudulently a question that the Government should not have asked. . . . A citizen may decline to answer the question, or answer it honestly, but he cannot with impunity knowingly and willfully answer with a falsehood.").

Contrary to the defendant's argument (Def. Mot. 11 at 16), this case is distinguishable from *United States v. Oshatz*, 700 F. Supp. 696 (S.D.N.Y. 1988). There, the defendant had already been indicted at the time of his deposition in a civil case, "was reluctant to be deposed because of the pending indictment, and he agreed only after the parties in the civil case stipulated that the deposition would be sealed." *Id.* at 699-700. The court found that the subpoenas for the deposition transcript were "unenforceable" because the "government has not argued that the protective order was improvidently granted or that there are some extraordinary circumstances or compelling need, in view of the holding in *Martindell*."⁴³ *Id.* at 701. The court found that the protective order served the "vital function" described in *Martindell*, as the defendant had already been indicted at the time of his deposition in a civil case for almost seven months; the defendant "consistently resisted the use of his testimony in the criminal action against him"; and the Government did not seek the deposition "to aid it in a criminal investigation or grand jury proceeding." *Id.* at 700; *see also Botha v. Don King Productions, Inc.*, No. 97 Civ. 7587 (JGK), 1998 WL 88745 (S.D.N.Y. Feb. 27, 1998) (noting importance of policy concerns of *Martindell* where Government obtained an indictment against witness "long before his deposition in the civil action" and where federal criminal case remains pending after civil action is resolved). Here, by contrast, Chief Judge McMahon found that the "Government has persuasively demonstrated extraordinary circumstances, which would entitle it to modification in any event." (Def. Mot. 3, Ex. G at 22). As she noted in her opinion, the situation was distinct from *Oshatz* "where the Government was trolling for evidence to use at a trial, rather than seeking information as part of a criminal investigation or grand jury proceeding." (*Id.* at 24-25). As Chief Judge McMahon already concluded, *Oshatz* does not warrant a different result here.

⁴³ In *Martindell*, the Second Circuit explicitly deemed it "unnecessary for us to decide the Fifth Amendment issues raised by the parties." *Martindell*, 594 F.2d at 297.

The defendant argues that *Martindell* “authorized her to give deposition testimony under the shield of the Protective Order without worrying whether the government could ‘insinuate itself’ into the case and use her own words against her.” (Def. Mot. 11 at 15-16). That is not the law, and the defendant cannot use the protective order to cloak her testimony. The Second Circuit has recognized that because “[i]t is well-settled here and elsewhere . . . that a Rule 26(c) protective order may be overturned or modified based on a finding of improvidence, extraordinary circumstances or compelling need[,]” “as a practical matter it is clear that the protections afforded by a Rule 26(c) order are *not* as extensive as those afforded by the fifth amendment, or by a statutory grant of use immunity, and that a protective order therefore cannot be used to abridge a witness’ fifth amendment rights.” *Andover Data Servs.*, 876 F.2d at 1083 (emphasis in original); *see id.* at 1084 (“‘Uncertainty about the ultimate outcome of a protective order will mean that no deponent may always effectively rely on a protective order to secure his right against self-incrimination.’”) (quoting *In re Grand Jury Subpoena*, 836 F.2d 1468, 1478 (4th Cir. 1988)); *Davis*, 702 F.2d at 421-22 (“Absent applicable grounds for exception, such as a previously asserted Fifth Amendment privilege, no shield protects the civil evidence [] from compellable production before the grand jury which subpoenaed it”).

4. The Government Did Not Violate Maxwell’s Due Process Rights

The defendant also claims that the Government’s conduct “cannot be squared with elemental due process.” (Def. Mot. 3 at 14 (citing U.S. Const. amend. V)). This claim is meritless. Because there was no Government misconduct—let alone the type of outrageous Government

misconduct that would justify the extraordinary remedy the defendant seeks—the motion must be denied.

a. Applicable Law

The Due Process Clause of the Fifth Amendment provides that “[n]o person . . . shall be deprived of life, liberty, or property without due process of law” The Due Process Clause “protects individuals against two types of government action.” *Martinez v. McAleenan*, 385 F. Supp. 3d 349, 356 (S.D.N.Y. 2019). Procedural due process “ensures that government cannot unfairly and without meaningful process deprive a person of life, liberty, or property,” while substantive due process “prevents the government from engaging in conduct that shocks the conscience, or interferes with rights implicit in the concept of ordered liberty.” *Id.* (internal quotation marks and citations omitted; alteration omitted).

Procedural due process analysis focuses on whether “government action depriving a person of life, liberty, or property. . . [is] implemented in a fair manner,” *United States v. Salerno*, 481 U.S. 739, 746 (1987). “Courts examine procedural due process questions in two steps: the first asks whether there exists a liberty or property interest which has been interfered with by the [Government]; the second examines whether the procedures attendant upon that deprivation were constitutionally sufficient.” *United States v. Arzberger*, 592 F. Supp. 2d 590, 599 (S.D.N.Y. 2008) (internal quotation marks and citations omitted).

As to substantive due process, the Supreme Court is “always . . . reluctant to expand the concept of substantive due process because guideposts for responsible decisionmaking in this unchartered area are scarce and open-ended.” *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (internal quotation marks and citation omitted). Because of this reluctance, the Supreme Court held in *Graham v. Connor*, 490 U.S. 386 (1989), “that where a particular Amendment provides an explicit textual source of constitutional protection against a particular sort of

government behavior, that Amendment, not the more generalized notion of substantive due process, must be the guide for analyzing these claims.” *County of Sacramento v. Lewis*, 523 U.S. 833, 842 (1998) (internal quotation marks omitted); *Albright v. Oliver*, 510 U.S. 266, 272 (1993) (“[t]he protections of substantive due process have for the most part been accorded to matters relating to marriage, family, procreation, and the right to bodily integrity.”).

The defendant bears the “‘very heavy’ burden of establishing a due process violation.” *United States v. Walters*, 910 F.3d 11, 27 (2d Cir. 2018). “To succeed on a claim that the government’s conduct in pursuit of evidence violates a defendant’s Fifth Amendment due process rights, the government’s method of acquiring the evidence must be so egregious that it ‘shocks the conscience.’” *United States v. Loera*, 333 F. Supp. 3d 172, 184 (E.D.N.Y. 2018) (internal quotation marks and citations omitted). “The concept of fairness embodied in the Fifth Amendment due process guarantee is violated by government action that is fundamentally unfair or shocking to our traditional sense of justice, or conduct that is ‘so outrageous’ that common notions of fairness and decency would be offended were judicial processes invoked to obtain a conviction against the accused.” *United States v. Schmidt*, 105 F.3d 82, 91 (2d Cir. 1997) (internal quotation marks and citations omitted). “Such outrageous or conscience shocking behavior involves egregious invasions of individual rights, or coercion.” *United States v. Coke*, No. 07 Cr. 971 (RPP), 2011 WL 3738969, at *5 (S.D.N.Y. Aug. 22, 2011) (internal quotation marks and citations omitted). The Second Circuit has explained:

The paradigm examples of conscience-shocking conduct are egregious invasions of individual rights. *See, e.g., Rochin*, 342 U.S. at 172, 72 S. Ct. 205 (breaking into suspect’s bedroom, forcibly attempting to pull capsules from his throat, and pumping his stomach without his consent). Especially in view of the courts’ well-established deference to the Government’s choice of investigatory methods, *see United States v. Myers*, 692 F.2d 823, 843 (2d Cir. 1982), the burden of establishing outrageous

investigatory conduct is very heavy, *see United States v. Schmidt*, 105 F.3d 82, 91 (2d Cir. 1997).

United States v. Rahman, 189 F.3d 88, 131 (2d Cir. 1999); *United States v. Al Kassar*, 660 F.3d 108, 121 (2d Cir. 2011) (“Generally, to be ‘outrageous,’ the government’s involvement in a crime must involve either coercion or a violation of the defendant’s person. It does not suffice to show that the government created the opportunity for the offense, even if the government’s ploy is elaborate and the engagement with the defendant is extensive.” (internal citations omitted)). The Second Circuit has “yet to identify a particular set of circumstances in which government investigative conduct was so egregious that it shocked the conscience and violated fundamental guarantees of due process.” *United States v. Heyward*, No. 10 Cr. 84 (LTS), 2010 WL 4484642, at *3 (S.D.N.Y. Nov. 9, 2010); *see also United States v. Cromitie*, 727 F.3d 194, 218 (2d Cir. 2019).

There also “must be a causal connection between the violation and the deprivation of the defendant’s life or liberty threatened by the prosecution.” *United States v. Ghailani*, 751 F. Supp. 2d 502, 505 (S.D.N.Y. 2010). “That is to say, relief against the government in a criminal case is appropriate if, and only if, a conviction otherwise would be a product of the government misconduct that violated the Due Process Clause.” *Id.*

Even where Government misconduct meets the outrageousness test, dismissal of an indictment is warranted only where the Government’s behavior “resulted in [] prejudice to the [defendant’s] defense or legal representation.” *United States v. DiGregorio*, 795 F. Supp. 630, 635 (S.D.N.Y. 1992). Absent a showing of prejudice, the appropriate remedy for conduct violating the test for outrageousness is suppression of the evidence obtained as the result of the Government’s outrageous misconduct. *Id.*

b. Discussion

The defendant argues that the Due Process Clause requires the suppression of the evidence the Government obtained pursuant to subpoena, including the April and July 2016 depositions, and the dismissal of Counts Five and Six. The defendant falls far short of carrying the very heavy burden of establishing a due process violation to warrant the extraordinary relief she seeks. The Government's conduct did not, by any reasonable definition, "shock the conscience."

The defendant has not identified explicitly the component of her due process rights that the Government allegedly violated. As she does not seem to allege that the Government deprived her of life, liberty, or property in an unfair manner (nor could she), it seems that the defendant is claiming that the Government's supposed misrepresentation of facts to the Court violated her substantive due process rights. As set forth above, the Government did not mislead Chief Judge McMahon in connection with its *ex parte* application. The Government did not violate the law, much less participate in any violation that so "shocks the conscience" as to require suppression as a matter of substantive due process.

The defendant has neither specified what "fundamental right" the Government allegedly violated nor provided legal authority supporting her claim. She cites *United States v. Valentine*, 820 F.2d 565, 570 (2d Cir. 1987), seemingly to argue that her right to a fair trial has been implicated because of the same alleged prosecutorial misconduct in connection with the modification of the protective order described above. However, the defendant cites no authority for the proposition that such misconduct (assuming, of course, it occurred, which it did not) would warrant the relief she now seeks, and the primary case she relies upon is readily distinguishable. In *Valentine*, the defendant was convicted of perjury based upon grand jury testimony in which he denied that he was given a loan to make a political contribution. 820 F.2d at 570. The Second Circuit reversed

and held that it was a due process violation for the prosecutor to suggest that certain witnesses, who had not testified at trial but who had testified before the grand jury, supported the Government's theory of the case, when in fact their testimony before the grand jury did not. *Id.* The Second Circuit stated that this action "violated the due process prohibition against a prosecutor's making 'knowing use of false evidence,' including by misrepresenting the nature of nontestimonial evidence." *Id.* at 570-71 (quoting *Miller v. Pate*, 386 U.S. 1, 6-7 (1967)). The Second Circuit further noted that reversal of a criminal conviction is a "drastic remedy that courts are generally reluctant to implement," and that the court would only do so "when a prosecutor's tactics cause substantial prejudice to the defendant and thereby serve to deprive him of his right to a fair trial." *Id.*

The instant case is easily distinguishable from *Valentine*, as it does not involve any of the same facts, including any alleged mischaracterization of grand jury testimony at trial or any prosecutor making "knowing use of false evidence." *Id.* at 570-71; *see also Mills v. Scully*, 826 F.2d 1192, 1195 (2d Cir. 1987) (citing *Valentine* for the proposition that "[e]ven where defense counsel is aware of the falsity, there may be a deprivation of due process if the prosecutor reinforces the deception by capitalizing on it in closing argument, or by posing misleading questions to the witnesses" (citations omitted)). "Prosecutorial misconduct denies a defendant due process only when it is 'of sufficient significance to result in the denial of the defendant's right to a fair trial.'" *Blissett v. Lefevre*, 924 F.2d 434, 440 (2d Cir. 1991) (quoting *Greer v. Miller*, 483 U.S. 756, 765 (1987)).

The defendant has otherwise failed to identify how she has been deprived of the right to a fair trial. A jury will hear testimony about the defendant's statements during her April and July 2016 depositions, along with other evidence, and determine if her statements were perjurious.

“While the Constitution guarantees a fair trial through the Due Process Clauses . . . it defines the basic elements of a fair trial largely through the several provisions of the Sixth Amendment.” *Caplin & Drysdale, Chartered v. United States*, 491 U.S. 617, 633 (1989) (citations omitted). “The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the State’s accusations. The rights to confront and cross-examine witnesses and to call witnesses in one’s own behalf have long been recognized as essential to due process.” *Chambers v. Mississippi*, 410 U.S. 284, 294 (1973). And as noted, the defendant cites no legal authority supporting the proposition that the Government’s actions during its investigation have somehow deprived her of a fair trial or otherwise violated her due process rights. In short, none of Maxwell’s allegations of misconduct rises to the level of a due process violation.

Dismissal of Counts Five and Six of the Indictment would be all the more unwarranted here, where there was no outrageous Government misconduct and where the defendant cannot show that the Government’s behavior prejudiced her defense or legal representation. Similarly, because there was no misconduct by the Government, there is no basis to suppress the evidence obtained pursuant to the subpoena. The defendant’s motion—unsupported by the law and the facts—must be denied.

5. The Court Should Not Exercise Its Inherent Authority to Order Suppression

The defendant urges the Court to exercise its inherent authority to order suppression. This Court should decline the defendant’s invitation to exercise this sparingly used power.

a. Applicable Law

“[T]he Supreme Court has recognized three purposes for the supervisory powers, ‘to implement a remedy for violation of recognized rights, to preserve judicial integrity by ensuring that a conviction rests on appropriate considerations validly before a jury, and finally, as a remedy

designed to deter illegal conduct.” *Coke*, 2011 WL 3738969, at *6 (quoting *United States v. Hastings*, 461 U.S. 499, 505 (1983)). “However, while there are times when a district court may properly find it absolutely necessary[, in order] to preserve the integrity of the criminal justice system, to suppress evidence under its inherent or supervisory authority, ‘the Supreme Court has explained that a court’s inherent power to refuse to receive material evidence is a power that must be *sparingly exercised* [only in cases of] *manifestly improper conduct* by federal officials.” *United States v. Lambus*, 897 F.3d 368, 401 (2d Cir. 2018) (alterations and emphasis in original) (internal quotations and citations omitted). The Second Circuit has “‘recognized that courts cannot fashion their own sub-constitutional limitations on the conduct of law enforcement agents.’” *Id.* (quoting *United States v. Ming He*, 94 F.3d 782, 792 (2d Cir. 1996)); *see also United States v. Myers*, 692 F.2d 823, 847 (2d Cir. 1982). “Accordingly, the court should not exercise its inherent or supervisory power ‘as a substitute for Fourth Amendment jurisprudence, which adequately safeguards against unlawful searches and seizures.’” *Lambus*, 897 F.3d at 401 (quoting *Ming He*, 94 F.3d at 792); *see also United States v. Payner*, 447 U.S. 727, 737 (1980) (“the supervisory power does not extend so far” as to “confer on the judiciary discretionary power to disregard the considered limitations of the law it is charged with enforcing”).

b. Discussion

By asking the Court to exercise its inherent authority, the defendant apparently means to suggest that the Court should grant the relief she seeks, even if she has failed to establish a violation of the Constitution or other governing law. The defendant fails to provide justification for the extraordinary remedy of suppression or to cite persuasive case law in favor of such an extraordinary use of the Court’s inherent authority.

The law is clear that a district court's supervisory authority does not extend to suppressing evidence absent some violation of the Constitution or other governing law. *See Payner*, 447 U.S. at 737 (holding that "the supervisory power does not extend" to "disregard[ing] the considered limitations of the law it is charged with enforcing"); *United States v. Anderson*, 772 F.3d 969, 976 (2d Cir. 2014) (same); *United States v. Jennings*, 960 F.2d 1488, 1491 (9th Cir. 1992) ("Absent a violation of a recognized right under the Constitution, a statute, or a procedural rule, a district court is not entitled to exclude evidence as a sanction against government practices disapproved of by the court."). The requirements established by the Supreme Court and the Second Circuit for suppressing evidence would have little effect if district courts were free to disregard them and suppress evidence by invoking their supervisory authority. Consistent with that principle, and given that this power is "*sparingly exercised*," *Lambus*, 897 F.3d at 401, (emphasis in original), this Court should not elect to do so here where the defendant has not established a violation of her Fourth Amendment, Fifth Amendment, or due process rights. *See, e.g., id.* at 401-02 ("We can appreciate the district court's frustration at careless government representations that may impact the integrity of judicial decisions, especially proffers in support of *ex parte* applications that an adversary has no opportunity to dispute[,] but finding that the district court erred in suppressing evidence by invoking its inherent authority); *Coke*, 2011 WL 3738969, at *6 (declining to exercise its supervisory powers to suppress wiretap evidence and finding defendant "has no Fourth Amendment right, and the novel substantive due process right he asks this Court to create cannot be described as a recognized right." (internal citations omitted)).

6. The Defendant Is Not Entitled to a Hearing

The defendant argues that if the Court is "disinclined" to grant the extraordinary relief of suppression she seeks, she is entitled to an evidentiary hearing to probe the Government's

“misstatements” to Chief Judge McMahon and the extent of coordination between the USAO-SDNY and Boies Schiller prior to the issuance of the subpoena. (Def. Mot. 3 at 16). With respect to that alleged “misconduct,” the defendant appears to make two general accusations: first, that in 2016 Boies Schiller encouraged the USAO-SDNY to investigate the defendant for perjury, and second, that the Government’s statement to Chief Judge McMahon as to whether she was facing a “*Chemical Bank* kind of situation” was false. Neither is correct, for the reasons described above. Because the defendant has proffered no reliable evidence to support any of the accusations contained in her motion papers, and because the Government has responded to those accusations with AUSA-1’s contemporaneous notes of the February 29, 2016 meeting and notes from an interview of AUSA-1 conducted by the USAO-SDNY and the FBI (*see* Exs. 4 & 5), as well as relevant AUSA-1 emails (Exs. 6 & 7), such a hearing is not warranted.

a. Applicable Law

“[E]videntiary hearings should not be set as a matter of course, but only when the petition alleges facts which if proved would require the grant of relief.” *Grant v. United States*, 282 F.2d 165, 170 (2d Cir. 1960). “In order to make the requisite showing in sufficient detail, the defendant must submit an affidavit by someone with personal knowledge that disputed facts exist.” *United States v. Noble*, No. 07 Cr. 284 (RJS), 2008 WL 140966, at *1 (S.D.N.Y. Jan. 11, 2008). “In the absence of such an affidavit, or when the allegations contained in such an affidavit are general and conclusory, an evidentiary hearing is unnecessary.” *United States v. Dewar*, 489 F. Supp. 2d 351, 359 (S.D.N.Y. 2007). A district court may decide the motion without a hearing if the moving papers do not create a genuine issue as to any material fact. *United States v. Caming*, 968 F.2d 232, 236 (2d Cir. 1992), *abrogated on other grounds by Ratzlaf v. United States*, 510 U.S. 135 (1994). Moreover, it is well settled that a material issue of fact sufficient to justify an evidentiary

hearing requires “an affidavit of someone with personal knowledge of the underlying facts.” *United States v. Shaw*, 260 F. Supp. 2d 567, 570 (E.D.N.Y. 2003); *see also United States v. Gillette*, 383 F.2d 843, 848 (2d Cir. 1967); *United States v. Ahmad*, 992 F. Supp. 682, 685 (S.D.N.Y. 1998) (“ordinarily [a factual issue must be] raised by an affidavit of a person with personal knowledge of the facts;” otherwise “there is no basis for holding an evidentiary hearing or suppressing the evidence”).

The defendant’s allegations are analogous to those raised when evaluating defendants’ claims of Government *Franks* violations. To obtain a *Franks* hearing, a defendant must make a “substantial preliminary showing,” *United States v. Falso*, 544 F.3d 110, 125 (2d Cir. 2008) (quoting *Franks v. Delaware*, 438 U.S. 154, 155-56 (1978)), that (i) there were “inaccuracies or omissions” in the affidavit, (ii) “the alleged falsehoods or omissions were necessary to the issuing judge’s probable cause or necessity finding,” and (iii) “the claimed inaccuracies or omissions [were] the result of the affiant’s deliberate falsehood or reckless disregard for the truth.” *Lambus*, 897 F.3d at 397; *see also United States v. Awadallah*, 349 F.3d 42, 64 (2d Cir. 2003). Even if a defendant clears the first *Franks* hurdle with a substantial preliminary showing of a false statement or omission, the defendant is not entitled to a *Franks* hearing unless a reviewing court makes the legal determination that the false statement or omission was “necessary to the [issuing] judge’s probable cause finding.” *United States v. Canfield*, 212 F.3d 713, 718 (2d Cir. 2000).

To determine whether alleged errors and omissions are material, a court should revise the affidavit (adding alleged omissions and correcting alleged errors), and determine whether the revised affidavit supports a finding of probable cause. *See, e.g., Canfield*, 212 F.3d at 719. If the revised affidavit supports a probable cause finding, then “the inaccuracies were not material to the probable cause determination and suppression is inappropriate.” *Id.* at 718. After adding the

alleged omissions and correcting the alleged errors, the “ultimate inquiry” is whether “there remains a residue of independent and lawful information sufficient to support probable cause.” *United States v. Martin*, 426 F.3d 68, 74 (2d Cir. 2005) (internal quotation marks and citations omitted).

“[E]ven if the misrepresented or omitted information was material, a motion to suppress is to be denied unless the misrepresentations or omissions were intentional or deliberate, or were made in reckless disregard for the truth.” *Lambus*, 897 F.3d at 399. The standard to demonstrate material false statements and omissions in an agent’s affidavit is a “high one.” *Rivera v. United States*, 928 F.2d 592, 604 (2d Cir. 1991). The intent prong of *Franks* is particularly demanding with respect to omissions. “*Franks* protects against omissions that are *designed to mislead*, or that are made in *reckless disregard of whether they would mislead*.” *Awadallah*, 349 F.3d at 68 (emphasis in original). After all, “[a]ll storytelling involves an element of selectivity,” and it is therefore not necessarily constitutionally significant that an affidavit “omit[s] facts which, in retrospect, seem significant.” *United States v. Lahey*, 967 F. Supp. 2d 698, 708 (S.D.N.Y. 2013) (quoting *United States v. Vilar*, No. 05 Cr. 621 (KMK), 2007 WL 1075041, at *27 (S.D.N.Y. Apr. 4, 2007)); see also *United States v. DeFilippo*, No. 17 Cr. 585 (WHP), 2018 WL 740727, at *2 (S.D.N.Y. Jan. 31, 2018) (“As courts in this Circuit have recognized, it is not shocking that every affidavit will omit facts which, in retrospect, seem significant.” (internal quotation marks and citations omitted)).

The “substantial preliminary showing” requirement explained above exists to “avoid fishing expeditions into affidavits that are otherwise presumed truthful.” *Falso*, 544 F.3d at 125. “[C]onclusory allegations cannot support a *Franks* challenge as a matter of law.” *United States v. Pizarro*, No. 17 Cr. 151 (AJN), 2018 WL 1737236, at *10 (S.D.N.Y. Apr. 10, 2018); see also

Franks, 438 U.S. at 171 (“To mandate an evidentiary hearing, the challenger’s attack must be more than conclusory and must be supported by more than a mere desire to cross-examine.”). Instead, to warrant a *Franks* hearing:

[t]here must be allegations of deliberate falsehood or of reckless disregard for the truth, and those allegations must be accompanied by an offer of proof. . . . Affidavits or sworn or otherwise reliable statements of witnesses should be furnished, or their absence satisfactorily explained. Allegations of negligence or innocent mistake are insufficient. The deliberate falsity or reckless disregard whose impeachment is permitted today is only that of the affiant, not of any nongovernmental informant.

Id.

The burden to even obtain a *Franks* hearing is a heavy one, and such hearings are thus exceedingly rare. *See United States v. Brown*, 744 F. Supp. 558, 567 (S.D.N.Y. 1990) (“A defendant seeking to have the Court hold a *Franks* hearing bears a substantial burden.”); *United States v. Swanson*, 210 F.3d 788, 790 (7th Cir. 2000) (“These elements are hard to prove, and thus *Franks* hearings are rarely held.”).

b. Discussion

In an alternative effort to suppress the materials obtained pursuant to the subpoena, the defendant argues that an evidentiary hearing is warranted to inquire into the Government’s “misrepresentations” to Chief Judge McMahon. (Def. Mot. 3 at 16). However, as discussed extensively above, Maxwell’s motion is little more than speculation and innuendo, itself rooted in a lone news article that, as described above, is not fully accurate. She otherwise presents no admissible evidence, affidavits, or other materials supporting the breathless accusations contained in her motion papers. As such, because the defendant does not include “an affidavit of someone with personal knowledge of the underlying facts,” *Shaw*, 260 F. Supp. 2d at 570, and because the

Government has responded with reliable information directly rebutting the defendant's allegations, there is no material issue of fact sufficient to justify an evidentiary hearing.⁴⁴

The defendant cites *Franks*, to suggest that a hearing is somehow warranted, but her motion falls far short of the standard required to obtain a hearing. “While the *Franks* analysis discussed above is typically employed to evaluate misstatements and omissions relating to probable cause, the Second Circuit has extended the *Franks* analysis to other Title III requirements for obtaining a warrant.” *United States v. Rajaratnam*, No. 09 Cr. 1184 (RJH), 2010 WL 4867402, at *18 (S.D.N.Y. Nov. 24, 2010). The defendant fails to identify the standard that would govern such a hearing. In light of the interests implicated by a Title III wiretap, the USAO-SDNY submits that the defendant's depositions in a civil matter, even with a protective order, are no more significant than the interests implicated by a Title III wiretap. As such, the exacting standard of *Franks* should apply. On this record, the defendant has not made a threshold showing that the Government acted with the intent to mislead or in reckless disregard for the truth. The *Franks* standard is rightly a “high one,” *Rivera*, 928 F.2d at 604, and one the defendant has failed to meet here.

The defendant's bald assertions alone do not entitle her to a fishing expedition in the form of a hearing.

V. The Jury Should Decide Whether the Defendant Committed Perjury

Counts Five and Six of the Indictment allege that, during the course of two depositions, the defendant knowingly made false material declarations, in violation of 18 U.S.C. § 1623. The defendant moves to dismiss those Counts, arguing that the Court can determine now—on a pre-

⁴⁴ For similar reasons, the defendant's request for discovery regarding this matter should be denied. The defendant has failed to meet her burden under Rule 16 of making “a *prima facie* showing of materiality and must offer more than the conclusory allegation that the requested evidence is material.” *Urena*, 989 F. Supp. 2d at 261 (citations omitted). Because the defendant has offered nothing more than her conjecture, based on an inaccurate and hearsay-ridden article, that some unspecified evidence might exist, her request for discovery should be denied.

trial record—that the questions were fundamentally ambiguous, and the defendant’s answers were truthful and immaterial. (Def. Mot. 5). To the contrary, the Government expects to prove at trial that the defendant understood the questions and that her answers were both false and materially so. This case does not present the narrow circumstances in which a court can and should dismiss perjury counts, let alone do so before trial.

A. Factual Background

On July 7, 2008, following the USAO-SDFL entering into the non-prosecution agreement with Epstein, two minors filed a petition under the Crime Victims’ Rights Act (CVRA), 18 U.S.C. § 3771, alleging that the prosecutors violated their rights under that statute. *See Doe v. United States*, 08 Civ. 80736 (S.D.F.L.). *See generally Doe No. 1. v. United States*, 749 F.3d 999, 1002 (11th Cir. 2014) (describing the background of the suit). On December 30, 2014, Virginia Roberts Giuffre moved to join the petition, alleging that the USAO-SDFL had also violated her CVRA rights. *See Doe*, No. 08 Civ. 80736, Dkt. No. 279.⁴⁵ In her motion for joinder, Giuffre described the defendant as “‘one of the main women’ Epstein used to ‘procure under-aged girls for sexual activities,’” and as a “‘primary co-conspirator’ with Epstein in his scheme. *See Giuffre v. Maxwell*, No. 18-2868 (2d Cir. 2019), Dkt. No. 287 at 10 (containing the unsealed summary judgment opinion from 15 Civ. 7433 (LAP)). Among other allegations, Giuffre alleged that the defendant “‘persuaded’ [her] to go to Epstein’s mansion,” and, “when Giuffre began giving Epstein a massage, [he] and [the defendant] ‘turned it into a sexual encounter.’” *Id.* at 11. Giuffre alleged that the defendant also “‘participat[ed] in the sexual abuse’” of others. *Id.* A few days later, the press reported a statement by a spokesman for the defendant, Ross Gow. Among other things,

⁴⁵ Giuffre filed a corrected motion on January 2, 2015. *See Doe*, No. 08 Civ. 80736, Dkt. No. 280. The court later struck the original motion, sealed the corrected motion, and ordered filing of a redacted version of the corrected motion. *See id.*, Dkt. No. 325 (Apr. 7, 2015).

Gow stated that Giuffre's claims were "untrue" and "obvious lies." (15 Civ. 7433 (LAP), Dkt. No. 1 at 6).

As described in the preceding section, in the fall of 2015, Giuffre sued the defendant for defamation.⁴⁶ (*See* 15 Civ. 7433 (LAP), Dkt. No. 1). Giuffre alleged that Epstein sexually abused her, "with the assistance and participation of Maxwell" at "numerous locations" between 1999 and 2002, and that Epstein abused more than thirty minors between 2001 and 2007 "with the assistance of numerous co-conspirators." (*Id.* at 3).

During the defendant's first deposition on April 22, 2016, the defendant refused to answer questions that she deemed related to consensual adult sexual interactions. (*See, e.g.*, Ex. 10 at 92:20-93:6). Giuffre moved to compel the defendant to answer, explaining that "[a]t the core of [her] allegations is the allegation that [the] Defendant lured her into a sexual situation with the offer of a job making money as a massage therapist; that Epstein always habitually tried to turn massages into sex . . . and that Maxwell recruited other females for an ostensibly proper position, such as therapeutic masseuse, with knowledge that the intent was for that person would be pressured to provide sexual gratification to Epstein." (15 Civ. 7443 (LAP), Dkt. No. 1137-1 at 5-6). Giuffre also explained that the defendant's refusal to answer questions about adult consensual sex prevented Giuffre "from seeking legitimate discovery," such as the identity of people the defendant presently deemed adults. (*Id.* at 6).

The Court granted Giuffre's motion. "[N]otwithstanding" the intrusiveness of the questions and the fact that the defendant had not put her private affairs at issue, "the questions are directed to reveal relevant answers regarding Defendant's knowledge of Plaintiff's allegations."

⁴⁶ The below discussion is provided as context for the Court's consideration of the motion. As discussed further in the Government's opposition to the defendant's motion for severance, the Government expects to provide a more streamlined presentation regarding the *Giuffre* suit at trial.

(Def. Mot. 4, Ex. H at 9). “That knowledge,” the Court explained, “goes directly to the truth or falsity of the alleged defamation, a key element of Plaintiff’s claim.” (*Id.*). The Court therefore ordered the defendant to answer the questions related to her sexual activity with or involving (1) Epstein, (2) Giuffre, (3) underage girls known to Epstein or who she thought might become known to Epstein, or (4) involving massage with individuals the defendant “knew to be, or believed might be, known to Epstein.” (*Id.* at 10). The Court further ordered the defendant to answer questions about her knowledge of the sexual activities of others in the same four categories. The Court added that the “scope of Defendant’s answers are not bound by time period, though Defendant need not answer questions that relate to none of these subjects or that is clearly not relevant.” (*Id.*). The defendant sat for a second deposition on July 22, 2016, before the case settled.

As discussed more fully below, the Indictment charges the defendant with two counts of perjury, one arising from statements made during the April 2016 deposition and one arising from statements made during the July 2016 deposition. Indictment ¶¶ 21, 23. (Ex. 10 at 253:25-254:8, 384:15-20; Ex. 11 at 88:9-89:13, 91:22-92:16, 113:2-12). The defendant now moves to dismiss both counts, arguing that the Court can effectively decide now, as a matter of law, that the questions were fundamentally ambiguous, her answers were true, and her answers were immaterial to the case.

B. Applicable Law

Section 1623(a) imposes criminal penalties on anyone who “in any proceeding before or ancillary to any court . . . knowingly makes any false material declaration.” 18 U.S.C. § 1623(a). In perjury prosecutions, “whether the witness believes that an answer is true or false generally turns on the declarant’s understanding of the question.” *United States v. Lighte*, 782 F.2d 367, 372 (2d Cir. 1986). Accordingly, and as is true of virtually all factual issues, “[a] jury is best equipped

to determine the meaning that a defendant assigns to a specific question.” *Id.*; *see, e.g. United States v. Sampson*, 898 F.3d 287, 307 (2d Cir. 2018).⁴⁷

A narrow exception arises when language in a question is so “fundamentally ambiguous” that a Court can conclude, as a matter of law, that a perjury count cannot stand. *Lighte*, 782 F.2d at 375. A question is “fundamentally ambiguous” when “it is not a phrase with a meaning about which [people] of ordinary intellect could agree, nor one which could be used with mutual understanding by a questioner and answerer unless it were defined at the time it were sought and offered as testimony.” *Id.* at 375 (internal quotation marks omitted). In such a case, the “answers associated with the questions posed may be insufficient as a matter of law to support the perjury conviction.” *United States v. Markiewicz*, 978 F.2d 786, 808 (2d Cir. 1992) (quoting *Lighte*, 782 F.2d at 375). For instance, in *Lighte*, a case involving post-conviction appellate review, the Court found that a question was fundamentally ambiguous because it used the word “‘you’ without indication that, unlike the prior two questions, the appellant was now being questioned in his role as trustee.” 782 F.2d at 376. “[F]undamental ambiguity,” however, “is the exception, not the rule.” *United States v. Sarwari*, 669 F.3d 401, 407 (4th Cir. 2012) (quoting *United States v. Farmer*, 137 F.3d 1265, 1269 (10th Cir. 1998)). A defendant cannot demonstrate fundamental ambiguity simply by showing that words used in a question are amenable to multiple meanings, or that an answer “might generate a number of different interpretations.” *Lighte*, 782 F.2d at 375; *United States v. Strohm*, 671 F.3d 1173, 1178 (10th Cir. 2011) (“Simply plumbing a question for *post hoc* ambiguity will not defeat a perjury conviction where the evidence demonstrates the defendant understood the question in context and gave a knowingly false answer.”). “If, in the

⁴⁷ The Second Circuit analyzes general principles of perjury similarly under 18 U.S.C. § 1623 and another perjury statute, 18 U.S.C. § 1621, *see Lighte*, 782 F.3d at 372, and it has assumed without deciding that those standards also apply to offenses under 18 U.S.C. § 1001(a)(2), *see United States v. Sampson*, 898 F.3d 287, 307 n.15 (2d Cir. 2018).

natural meaning in the context in which words were used they were materially untrue, perjury was established.” *United States v. Bonacorsa*, 528 F.2d 1218, 1221 (2d Cir. 1976). Critically, and as noted with respect to *Lighte* above, courts generally evaluate whether a challenge to a perjury count on the basis that a question was fundamentally ambiguous *after trial* and following the development of a full factual record. *See, e.g., Strohm*, 671 at 1175 (appeal following conviction); *Sarwari*, 669 F.3d at 406 (same); *Farmer*, 137 F.3d at 1269 (appeal following conviction and partial Rule 29 dismissal) *Markiewicz*, 978 F.2d at 808 (appeal following conviction); *cf. United States v. Forde*, 740 F. Supp. 2d 406, 413 (S.D.N.Y. 2010) (denying a motion to dismiss a perjury count). Indeed, the defendant cites no case in which a court has dismissed a perjury count on the basis of “fundamental ambiguity” before trial.

Because perjury requires a knowing false statement, the law does not permit conviction based on answers that are literally true. *See Lighte*, 782 F.2d at 374. Nor can a conviction rest on answers that are literally true but unresponsive, and therefore “arguably misleading by negative implication.” *Id.*; *see Bronston v. United States*, 409 U.S. 352, 362 (1973). But when “the answer is false, the fact that it is unresponsive is immaterial.” *United States v. Corr*, 543 F.2d 1042, 1049 (2d Cir. 1976). Even statements that “could be literally true in isolation” can support a perjury conviction if they are “materially untrue” in “the context in which the statements were made.” *United States v. Schafrick*, 871 F.2d 300, 304 (2d Cir. 1989). “[U]nless the questioning is fundamentally ambiguous or imprecise, the truthfulness of [the defendant’s] answers is an issue for the jury.” *Id.* at 304; *see United States v. Kaplan*, 758 F. App’x 34, 39 (2d Cir. 2018) (same); *cf. Lighte*, 782 F.2d at 374 (finding the evidence insufficient where some answers “were literally true under any conceivable interpretation of the questions”).

Finally, even if a defendant makes a knowing false statement, a perjury conviction requires that the statement be material. A false statement is material if it has “a natural tendency to influence, or [be] capable of influencing, the decision of the decisionmaking body to which it was addressed.” *United States v. Gaudin*, 515 U.S. 506, 509 (1995) (alteration in original) (quotation marks omitted). A statement made in a civil deposition is also material if “a truthful answer might reasonably be calculated to lead to the discovery of evidence admissible at the trial of the underlying suit.” *United States v. Kross*, 14 F.3d 751, 754 (2d Cir. 1994)); *see United States v. Birrell*, 470 F.2d 113, 115 n.1 (2d Cir. 1972) (explaining, in the context of a motion to proceed *in forma pauperis* and for appointment of counsel, that “it must be shown that a truthful answer would have been of sufficient probative importance to the inquiry so that, as a minimum, further fruitful investigation would have occurred.” (citation and internal quotation marks omitted)). “The testimony need not have actually influenced, misled, or impeded the proceeding.” *United States v. Chan Lo*, No. 14 Cr. 491 (VSB), 2016 WL 9076234, at *8 (S.D.N.Y. Feb. 4, 2016), *aff’d* 679 F. App’x 79 (2d Cir. 2017); *see Forde*, 740 F. Supp. 2d at 412. Since materiality is an element of the offense, it is a question for the jury “except in the most extraordinary circumstances.” *Forde*, 740 F. Supp. 2d at 412 (citing *Gaudin*, 515 U.S. at 522–23).

C. Discussion

The Government expects to prove at trial that the defendant’s deposition statements were knowingly false. The defendant’s strained efforts to inject ambiguity into the questioning and to justify her answers as truthful are in significant part, arguments that are properly put to the jury and not a basis to dismiss the counts pretrial and without the benefit of a complete record. *See United States v. Triumph Capital Group, Inc.*, 237 F. App’x 625, 627-28 (2d Cir. 2007) (“Generally, the meaning and truthfulness of a defendant’s statement is a question of fact for the

jury.”). At this stage, the defendant must identify defects so fundamental that the charged statements cannot, as a matter of law, support a perjury conviction. She has failed to do so, and her motion should be denied.

1. April 2016 Deposition

At the April 2016 deposition, Giuffre’s counsel asked the defendant about how Giuffre came to Epstein’s home (Ex. 10 at 14:9-17:4), whether hired massage therapists engaged in sexual activity with Epstein (*id.* at 51:13-55:16), and the defendant’s knowledge of Epstein’s Florida criminal case (*id.* at 171:25-173:12, 183:25-186:21), among other topics. The transcript makes clear that when the defendant did not understand a question, she said so. (*See, e.g., id.* at 9:4-9 (“[C]an you please clarify the question. I don’t understand what you mean by female, I don’t understand what you mean by recruit.”), 39:23-24 (“I don’t understand what your question is asking.”), 94:18-95:4 (“You don’t ask me questions like that. First of all, you are trying to trap me, I will not be trapped.”), 138:6 (“Define relationship.”), 244:22-23 (“You are not asking me a good question, sorry.”).

Count Five charges the defendant with perjury arising from two colloquies at this deposition. First, Giuffre’s counsel asked the defendant a series of questions about whether the defendant brought women to Epstein, which the defendant resisted by observing that she hired “people across the board” to “work for Jeffrey.” (*Id.* at 245:7-18). Giuffre’s counsel asked whether any minors worked as exercise instructors or masseuses at Epstein’s home, and the defendant testified that they were all adults except for Giuffre, who she acknowledged at least claimed to have been seventeen. (*Id.* at 246:18-251:12). Giuffre’s counsel then asked questions about whether Epstein had a “sexual preference for underage minors,” which drew objections from

defense counsel and which the defendant ultimately answered by saying “I cannot tell you what Jeffrey’s story is. I’m not able to.” (*Id.* at 251:13-253:12). This colloquy followed:

Q. Did Jeffrey Epstein have a scheme to recruit underage girls to use them for purposes of sexual massages?

MR. PAGLIUCA: Objection to the form and foundation.

A. Can you ask me again, please?

Q. Did Jeffrey Epstein have a scheme to recruit underage girls to recruit them for sexual massages?

MR. PAGLIUCA: Objection to the form and foundation.

A. Can you ask it a different way?

Q. Did Jeffrey Epstein have a scheme to recruit underage girls for sexual massages?

MR. PAGLIUCA: Objection to the form and foundation.

Q. If you know.

A. I don't know what you are talking about.⁴⁸

(Ex. 10 at 253:13-254:8).

The defendant argues that the question was ambiguous, as shown by her requests for the questioner to rephrase the question. (Def. Mot. 4 at 9–10, 18). A properly instructed jury could readily conclude otherwise in light of the evidence the Government expects to introduce at trial. The defamation case involved allegations that Giuffre was a victim of that scheme: Giuffre had alleged that Epstein and the defendant had sexualized a massage that Giuffre gave Epstein. The preceding questions focused on (1) whether the defendant brought underage masseuses to work for Epstein, and (2) whether Epstein had a sexual preference for underage girls. Moreover, at trial and as discussed further below, the Government expects to elicit testimony from one or more of

⁴⁸ Underlined sentences are charged as false statements in the Indictment.

the victims specified in the Indictment about sexualized massages the victims provided to Epstein, conduct that obviously predated the deposition. *See* Indictment ¶ 7(a), (c). In context, and with an understanding of the Government’s other evidence, a rational juror could readily conclude that the question “did Jeffrey Epstein have a scheme to recruit underage girls for sexual massages . . . [i]f you know?” had a clear meaning, and more important for purposes of the instant motion, any ambiguity was not “fundamental.” *Cf. Triumph Capital Grp., Inc.*, 237 F. App’x at 628 (concluding that an answer about “this arrangement” was not fundamentally ambiguous).

Nor is there any basis to dismiss the count now based on the defendant’s professed confusion or denial of knowledge of the scheme’s existence. A defendant may commit perjury by falsely denying memory or knowledge of an event. *See, e.g., United States v. Alberti*, 568 F.2d 617, 625 (2d Cir. 1977); *United States v. Weiner*, 479 F.2d 923, 926, 929 (2d Cir. 1973); *Forde*, 740 F. Supp. 2d at 410-11. Viewing the question and answer “in the context of the line of questioning as a whole,” the defendant “consistently denied” knowledge of Epstein’s scheme, *Markiewicz*, 978 F.2d at 810, and a jury could conclude that the “question was not fundamentally ambiguous—and thus that [the defendant], understanding the question, lied.” *See Sampson*, 898 F.3d at 307; *cf.* Indictment ¶¶ 4(e) 11(c)-(d), 17(c)-(d) (discussing use of massage as part of the sexual abuse scheme).

Second, later in the deposition, Giuffre’s counsel asked the defendant a series of questions in an attempt to identify other underage girls that the defendant met and brought to Epstein. Specifically:

Q. Can you list for me all the girls that you have met and brought to Jeffrey Epstein’s house that were under the age of 18?

MR. PAGLIUCA: Objection to the form and foundation.

A. I could only recall my family members that were there and I could not make a list of anyone else because that list -- it never happened that I can think of.

Q. I'm talking about the time you were working for Jeffrey Epstein, can you list all girls that you found for Jeffrey Epstein that were under the age of 18 to come work for him in any capacity?

MR. PAGLIUCA: Objection to the form and foundation.

A. I didn't find the girls.

Q. You choose the word.

MR. PAGLIUCA: If you have a question ask it, you don't choose the word.

Q. List all of the girls you met and brought to Jeffrey Epstein's home for the purposes of employment that were under the age of 18?

MR. PAGLIUCA: Objection to the form and foundation.

A. I've already characterized my job was to find people, adults, professional people to do the jobs I listed before; pool person, secretary, house person, chef, pilot, architect.

Q. I'm asking about individuals under the age of 18, not adult persons, people under the age of 18.

A. I looked for people or tried to find people to fill professional jobs in professional situations.

Q. So Virginia Roberts was under the age of 18, correct?

A. I think we've established that Virginia was 17.

Q. Is she the -- sorry, go ahead. Is she the only individual that you met for purposes of hiring someone for Jeffrey that was under the age of 18?

MR. PAGLIUCA: Objection to form and foundation. Mischaracterizes her testimony.

A. I didn't hire people.

Q. I said met.

A. I interviewed people for jobs for professional things and I am not aware of anyone aside from now Virginia who clearly was a masseuse aged 17 but that's, at least that's how far we know that I can think of that fulfilled any professional capacity for Jeffrey.

Q. List all the people under the age of 18 that you interacted with at any of Jeffrey's properties?

A. I'm not aware of anybody that I interacted with, other than obviously Virginia who was 17 at this point?

(Ex. 10 at 382:4-384:20).

The defendant argues that this question was “grossly ambiguous: who was ‘Jeffrey’; what were ‘Jeffrey’s properties’; to what time frame did the question apply; what was the basis for Ms. Maxwell to determine who may or may not have been ‘under the age of 18’; and what did ‘interact with’ mean?” (Def. Mot. 4 at 11). These arguments only underscore the principle that perjury prosecutions are an inquiry into “the natural meaning in the context in which words were used,” *Bonacorsa*, 528 F.2d at 1221, and not an opportunity for defense counsel to “plumb[] a question for *post hoc* ambiguity,” *Strohm*, 671 F.3d at 1178. A reasonable jury, after hearing the evidence, could readily conclude that the natural meaning of those words in context is abundantly clear. For instance, at the end of trial, a jury could conclude that “Jeffrey” is Jeffrey Epstein; “Jeffrey’s properties” are Jeffrey Epstein’s properties, including his houses in Palm Beach, New York, New Mexico, and the United States Virgin Islands (*see, e.g.*, Ex. 10 at 248:17-20 (naming those properties)); and “interact” is an expansive word aimed at capturing any encounter, that was used after the defendant resisted words like “met,” “found,” and “hired” in the prior questions, *see Interact, Oxford English Dictionary Online*, <https://oed.com/view/Entry/97518> (last visited February 25, 2021) (“To act reciprocally, to act on each other.”). Such inferences will be particularly easy for a jury to reach after hearing multiple victims testify about their own

interactions with the defendant and Epstein at Epstein's various properties. *See, e.g.*, Indictment ¶ 7(a) ("MAXWELL subsequently interacted with Minor Victim-1 on multiple occasions at Epstein's residences."). Accordingly, a rational juror, after hearing the evidence, could find that the question called for the names of minors that the defendant interacted with at any of Jeffrey Epstein's properties, that the defendant answered that she was aware of no such minors other than Giuffre, and therefore that her answer was false. And even if the defendant identifies some plausible ambiguity—and she has not—the terms in this question are ones "with a meaning about which [people] of ordinary intellect could agree," and therefore are not fundamentally ambiguous. *Lighte*, 782 F.2d at 375 (internal quotation marks omitted).

The defendant points out that, in response to an earlier question asking her to list the underage girls she "met and brought" to Epstein's house, she said that she could not do so. (Def. Mot. 4 at 12-13). She argues that the charged question was "improper" because it asked her to generate a list "from events that had happened nearly two decades previously." (*Id.*). Her unpersuasive after-the-fact efforts to justify her answer provide no basis to keep this question from the jury. As noted above, the transcript makes clear (and a jury could find) that when the defendant did not understand or could not answer a question, she said so. To the extent the defendant is arguing that her answer was literally true, a reasonable jury could find otherwise. In this respect, the Government notes, among other things, that in response to the earlier question, the defendant said that she could not make a list not because she could not remember events from that long ago but "because that list -- *it never happened* that I can think of." (Ex. 10 at 382:4-13) (emphasis added). And in response to the charged question, the defendant said that she "was not aware of anybody" under 18—that is, the list would be empty. *See Forde*, 740 F. Supp. 2d at 413 ("Olivieri, if truly confused, could also have asked for clarification. Instead he replied with a strong

denial . . .”). A properly instructed jury could conclude after hearing all of the evidence at trial that the defendant intended the natural meaning of the words she used, not the allegedly truthful answer she suggests now, and therefore that she lied. In sum, the defendant’s post-hoc efforts to inject confusion into clear questioning are unavailing and should be rejected, and the jury should decide whether the defendant’s answers were false.

2. July 2016 Deposition

Count Six charges the defendant with perjury arising from three colloquies at the second deposition. During the deposition, the defendant acknowledged that she had engaged in “sexual activities” with persons “other than Mr. Epstein at Mr. Epstein’s home in Palm Beach.” (Ex. 11 at 54:24-55:5). Although she did not remember the names of any of those women, she recalled a “blond” and a “brunette.” (*Id.* at 56:22-57:18). Giuffre’s lawyer later inquired as to whether any of those women were “professional masseuses” or whether any of them gave Epstein or the defendant “massages.” (*Id.* at 85:21-86:12). Following that line of questioning, the following colloquy occurred:

Q. When you and Mr. Epstein were engaged in sexual activity that included these other women, were any devices or sex toys used as part of the sexual activity?

A. No.

Q. Were you ever involved in sexual activities in Mr. Epstein’s Palm Beach house that included the use of sex toys or any kind of mechanical or other device?

MR. PAGLIUCA: Objection to form and foundation.

A. No.

Q. Were you ever involved in sexual activities in any of Mr. Epstein’s properties other than Palm Beach that included the use of sex toys or any kind of mechanical or other device?

A. No.

Q. Were you aware of the presence of sex toys or devices used in sexual activities in Mr. Epstein's Palm Beach house?

MR. PAGLIUCA: Objection to form and foundation.

A. No, not that I recall.

(*Id.* at 87:15-88:14).

After questions about Epstein's other properties, Giuffre's lawyer asked the following question:

Q. Do you know whether Mr. Epstein possessed sex toys or devices used in sexual activities?

MR. PAGLIUCA: Objection to form and foundation.

A. No.

(*Id.* at 89:8-13).

The defendant now argues that these questions are ambiguous because they contain “numerous undefined terms,” such as “sex toy or device” and “sexual activities.” (Def. Mot. 4 at 14). She asks, for instance, whether “bath oil” would count as a sex toy or device. (*Id.*). Yet this argument is simply another attempt to imbue ambiguity after the fact into commonly used words with common sense meanings. The mere fact that a term could apply equally to several different objects does not automatically mean that the question is impermissibly vague and can never form the basis of a perjury charge. See, e.g., H.L.A. Hart, *Positivism and the Separation of Law and Morals*, 71 Harv. L. Rev. 593, 607 (1958) (“A legal rule forbids you to take a vehicle into the public park. Plainly this forbids an automobile, but what about bicycles . . . ?”). Instead, it is well-settled that “[t]he jury should determine whether the question—as the declarant must have understood it, giving it a reasonable reading—was falsely answered.” *Lighte*, 782 F.2d at 372. So

long as the question involves a phrase “which could be used with mutual understanding by a questioner and answerer,” it is not fundamentally ambiguous. *Id.* at 375 (internal quotation marks omitted); see *United States v. Jenkins*, 727 F. App’x 732, 735 (2d Cir. 2018) (“An individual of ordinary intelligence would not think that a question asking for information regarding ‘real estate, stocks, bonds, . . . or other valuable property’ would allow omission of information regarding money market funds . . .”).

The use of broad or inclusive terms does not render the question fundamentally ambiguous. As the Second Circuit explained in the context of the term “employment activities,” “[t]he broad language of the question is not fundamentally ambiguous; it is instead designed to capture *all* employment activities in an applicant’s recent history.” *United States v. Polos*, 723 F. App’x 64, 65-66 (2d Cir. 2018). So too here. A “sex toy or device” is an intelligible phrase with an understood meaning. See *Sex Toy*, *Oxford English Dictionary Online*, <https://www.oed.com/view/Entry/176989> (last visited February 12, 2021) (“[A] device or object designed for sexual stimulation (as a dildo, vibrator, etc.) or to enhance sexual pleasure or performance.”). To the extent the term “sexual activities” contains ambiguity, it was defined earlier in the deposition. (Ex. 11 at 54:4-23 (defining “sexual activities” to include “Kissing, touching with hands or mouths or other parts of your body” and stating “Whenever I use the term sexual activities, I will be using it in the way we just defined it.”)).

The defendant’s objections to the next colloquy in the indictment are similarly unavailing. Shortly after the above exchange, the following conversation occurred:

Q. At any time in any of Mr. Epstein’s properties, did you engage in sexual activities with any woman other than when you had three-way sexual activities with Mr. Epstein?

MR. PAGLIUCA: Object to the form.

A. Can you repeat the question?

Q. At any time, in any of Mr. Epstein's properties, did you engage in sexual activities with any woman other than when you had three-way sexual activities with Mr. Epstein?

MR. PAGLIUCA: Same objection.

A. No.

Q. Other than yourself and the blond and brunette that you have identified as having been involved in three-way sexual activities, with whom did Mr. Epstein have sexual activities?

MR. PAGLIUCA: Objection to form and foundation.

A. I wasn't aware that he was having sexual activities with anyone when I was with him other than myself.

Q. I want to be sure that I'm clear. Is it your testimony that in the 1990s and 2000s, you were not aware that Mr. Epstein was having sexual activities with anyone other than yourself and the blond and brunette on those few occasions when they were involved with you?

A. That is my testimony, that is correct.

(Ex. 11 at 91:8-92:16).

The defendant primarily argues that her answers were literally true. In the defendant's telling, the phrase "[w]hen I was with him," refers not to the duration of the defendant's relationship with Epstein, but instead to only those moments when she was in the act of having sex with Epstein and either the blond or brunette identified above. (Def. Mot. 4 at 16). Accordingly, as the defendant would have it, the question asked whether any of Epstein and the defendant's three-person sexual encounters involved a fourth person, the answer to which is no, she argues, because three-person sexual activities by definition cannot involve four people. And in any event, she further argues, because the question asked the defendant about the 1990s and 2000s, it therefore covered any "sexual activities" spanning more than a millennium." (*Id.* at 16-17).

The defendant, therefore, argues that the questioner asked whether a logically impossible event occurred or will occur at some point over the course of a millennium. But the defendant's professed confusion—which again was not raised during the deposition itself—ignores the plain and obvious context of the question, which did not refer to a time period far exceeding the human life span, and was not limited to only the times in which the defendant was in the act of having sex with Epstein. Plainly, a jury could find that the defendant correctly understood the question when she answered it in July 2016, and that she ascribed a natural meaning to the words used in the questions, and not the tortured illogical meaning she now assigns to those questions: whether, during the course of her relationship with Epstein, she was aware of anyone other than herself having sexual relations with Epstein. The Government expects its evidence to show that she was. *See, e.g.*, Indictment ¶ 1 (stating that the defendant “assisted, facilitated, and contributed to” Epstein’s sexual abuse of minors). At a minimum, the defendant’s answers were not “literally true under any conceivable interpretation of the questions.” *Lighte*, 782 F.2d at 374. And the defendant’s professed confusion now and proposed illogical reading of the questions in the instant motion does not render them fundamentally ambiguous. *See Bonacorsa*, 528 F.2d at 1221 (“A defense to a charge of perjury may not be established by isolating a statement from context, giving it in this manner a meaning entirely different from that which it has when the testimony is considered as a whole.”). Accordingly, a jury should be permitted to determine what meaning the defendant ascribed to those questions and whether her answers were in fact false.

Finally, the defendant answered the following questions:

Q. Did you ever give a massage to anyone other than Mr. Epstein at any of Mr. Epstein's properties?

A. First of all, I never said I gave Mr. Epstein a massage.

Q. I will ask that question if you want, but I was focusing on people other than Mr. Epstein right now.

A. I don't give massages.

Q. Let's just tie that down. It is your testimony that you've never given anybody a massage?

A. I have not given anyone a massage.

Q. You never gave Mr. Epstein a massage, is that your testimony?

A. That is my testimony.

Q. You never gave [Minor Victim-2] a massage is your testimony?

A. I never gave [Minor Victim-2] a massage.

(Ex. 11 at 112:17-113:12).

The defendant argues that these questions were fundamentally ambiguous because the deposition elsewhere discussed both sexual and professional massages. It was unclear, she explains, what kind of massage the questioner meant. (Def. Mot. 4 at 17.) The defendant's argument is, yet again, misguided. This line of questioning used broad language, and at no point during this set of questions did Giuffre's counsel suggest that the questions were limited to sexual or professional massages. *Cf. Lighte*, 782 F.2d at 376 (concluding that the word "you" was ambiguous when the prior two questions asked about the defendant "as an individual" and then switched "without indication" to the defendant "as trustee"). The defendant's answers were unequivocal, with no expressions of confusion or internal contradictions. *Cf. Markiewicz*, 978 F.2d at 809 (explaining that a question was ambiguous as to whether it asked about the deponent's personal or professional capacities, in light of the deponent's confusion in the next questions). A properly instructed jury could conclude that the defendant meant what she said: she never gave anyone a massage, including Epstein and Minor Victim-2.

The defendant is, of course, free to testify on her own behalf to her professed confusion or otherwise argue to the jury that the questions were ambiguous or the answers truthful. The issue before the Court is whether the questions were so fundamentally ambiguous that a jury, after hearing the trial evidence, could not conclude that the “response given was false as the defendant understood the question.” *Lighte*, 782 F.2d at 375 (internal quotation marks omitted). The defendant has failed to establish such a fundamental defect.⁴⁹

3. Materiality

Finally, the defendant argues that none of these answers was material to the defamation action. As a threshold issue, however, materiality is also not appropriate for resolution on a motion to dismiss the indictment. As noted above, materiality is a jury question “except in the most extraordinary circumstances.” *Forde*, 740 F.Supp.2d at 412 (citing *Gaudin*, 515 U.S. at 522–23). As the Supreme Court explained in *Johnson v. United States*, 520 U.S. 461 (1997), “there is no doubt that materiality is an element of perjury under § 1623,” and its precedent “therefore dictates that materiality be decided by the jury, not the court.” *Id.* at 465.

The Second Circuit has explained that it is inappropriate for courts to resolve questions relating to the sufficiency of the evidence on a motion to dismiss the indictment. The Federal Rules of Criminal Procedure contain no “analogue for summary judgment under Federal Rule of Civil Procedure 56” for several reasons. *United States v. Sampson*, 898 F.3d 270, 280 (2d Cir. 2018). First, “[p]ermitting civil ‘summary judgment’-like motions . . . would enable an end-run around the calibrated framework for discovery in criminal cases,” and thereby “upset the policy

⁴⁹ Even if the Court concludes that any of the individual statements charged in the Indictment cannot sustain a perjury conviction, the count survives so long as some statement can properly be presented to the jury. *See Bonacorsa*, 528 F.2d at 1221 (“It is customary, and ordinarily not improper, to include more than one allegedly false statement in a single count. . . . Where there are several such specifications of falsity in a single count, proof of any of the specifications is sufficient to support a verdict of guilty.” (citations omitted)).

choices reflected in the criminal discovery rules.” *Id.* Second, doing so “risks invading ‘the inviolable function of the jury’ in our criminal justice system.” *Id.* at 281 (citation omitted). Accordingly, if the “defense raises a factual dispute that is inextricably intertwined with a defendant’s potential culpability, a judge cannot resolve that dispute on a Rule 12(b) motion.” *Id.*

The exception to this rule is “extraordinarily narrow” because, in the normal course, the “government must make a detailed presentation of the entirety of the evidence before a district court can dismiss an indictment on sufficiency grounds,” which the Government is not required to do at the motion-to-dismiss stage. *Id.* at 282 (internal quotation marks and citation omitted). That point is underscored by *United States v. Nitsche*, 843 F. Supp. 2d 4 (D.D.C. 2011), on which the defendant relies. There, the district court dismissed an indictment in a child enticement case for insufficiency of the evidence. First, however, the court explained that the question was ripe because “(1) Defendant has stipulated to the entire record that is relevant to Count I; (2) the Government has had several opportunities to make a proffer of any additional facts, to conduct any subsequent investigation, and to ask the Court for further delay to seek more evidence; and (3) because the record is limited to the chat.” *Id.* at 9. Accordingly, “[t]he transcripts themselves provide the Court with all of the relevant undisputed facts to decide the motion.” *Id.* Here, of course, that is simply not the case and, in particular, there is no stipulation as to the entire relevant record.

Under the relevant legal standard, the defendant’s statements were material if they could have led to the discovery of other evidence or could influence the factfinder in the defendant’s civil case. Evaluating that standard necessarily implicates facts beyond the deposition testimony itself and Judge Preska’s unsealing order,⁵⁰ such as identification of the allegedly defamatory

⁵⁰ The defendant observes that Judge Preska redacted some of the statements that form the basis of Count Six, stating that the “testimony is . . . far afield from the sex trafficking and sexual abuse

statements at the heart of that case and the evidence that might have been uncovered had the defendant answered the questions truthfully. A jury should be allowed to hear the questions in context to evaluate their materiality, which cannot be done at this stage.⁵¹ The Court therefore should deny the motion.

In any event, the perjurious statements were material in both senses of the definition. First, the questions were aimed at developing a record in the civil suit that Epstein and the defendant recruited Giuffre to Epstein's Palm Beach property in the guise of hiring her as a masseuse, and then sexualized that massage. Honest answers to those questions—for instance that Epstein in fact had a scheme to recruit underaged girls for sexual massages—would have been corroborative of some of Giuffre's claims. Second, had the defendant honestly answered the deposition questions, Giuffre could have located other victims or witnesses who may have corroborated her testimony. But in any event, the question of materiality should be put to the jury and is inappropriate for the Court to resolve on a motion to dismiss without the benefit of the full factual record. The motion should be denied.

allegations that were central to the dispute in *Giuffre v. Maxwell*.” (Def. Mot. 4, Ex. I at 7:3-6.) (The last colloquy has been unsealed except for Minor Victim-2's name. (*See* 15 Civ. 7433 (LAP), Dkt. No. 1212-1).) Yet Judge Preska's opinion as to the propriety of certain redactions in a civil case is not controlling as to whether the Government can meet the elements of a criminal perjury charge here. First, before Judge Preska were the defendant's denials of various sexual activities, not honest answers that would have been quite different. In part for that reason, Judge Sweet authorized the deposition at the outset. Second, the Government was not a party to the civil unsealing litigation and did not have an opportunity to be heard on this issue before Judge Preska.

⁵¹ While the Government is open to crafting a stipulation on the background of the *Giuffre* lawsuit to streamline presentation of these issues to the jury, it notes that the defendant's summary of that suit as set forth in her motion is incorrect. (*E.g.*, Def. Mot. 4 at 20 (erroneously asserting that the defamation claims at issue turned on Giuffre's ability to prove salacious allegations about public officials)).

In sum, the defendant asks this Court to dismiss Counts Five and Six by stretching to read ambiguity into clear questions and encouraging the Court to resolve questions committed to the jury. The Court should reject those arguments and permit the jury to resolve these issues of fact.

VI. Counts Five and Six Are Properly Joined and Should Not Be Severed

The Indictment charges the defendant with participating in a scheme to sexually abuse minors, and with committing perjury to conceal her crimes. All six counts of the Indictment are properly joined: they are logically connected, subject to overlapping proof, and connected by a common scheme or plan. To sever the counts and justify holding a second trial at which a second jury will be convened and the same witnesses—including victims of sexual abuse—will testify a second time, the defendant must carry a heavy burden by showing substantial prejudice from the joinder. She has not done so, and the severance motion should be denied.

A. Applicable Law

Federal Rule of Criminal Procedure 8(a) permits the joinder of offenses that “are of the same or similar character, or are based on the same act or transaction, or are connected with or constitute parts of a common scheme or plan.” Fed. R. Crim. P. 8(a). This rule establishes three tests for joinder, each “reflect[ing] a policy determination that gains in trial efficiency outweigh the recognized prejudice that accrues to the accused.” *United States v. Turoff*, 853 F.2d 1037, 1042 (2d Cir. 1988).

Charges are “similar” if they are “somewhat alike” or “hav[e] a general likeness to each other.” *United States v. Rivera*, 546 F.3d 245, 253 (2d Cir. 2008) (quoting *United States v. Werner*, 620 F.2d 922, 926 (2d Cir. 1980) (internal quotation marks omitted). “Rule 8(a) does not require ‘too precise an identity between the character of the offenses.’” *United States v. Pizarro*, No. 17 Cr. 151, 2018 WL 1737236, at *3 (S.D.N.Y. Apr. 10, 2018) (Nathan, J.) (quoting *Werner*, 620

F.2d at 929). Offenses may be joined “where the same evidence may be used to prove each count or if the counts have a sufficient logical connection.” *United States v. Page*, 657 F.3d 126, 129 (2d Cir. 2011) (internal quotation marks and citations omitted). “For purposes of analysis under Rule 8(a),” however, “no one characteristic is always sufficient to establish ‘similarity’ of offenses, and each case depends largely on its own facts.” *United States v. Blakney*, 941 F.2d 114, 116 (2d Cir. 1991) (internal quotations and citations omitted). For instance, in *United States v. Werner*, 620 F.2d 922 (2d Cir. 1980), the “Second Circuit found sufficient similarity between two cargo thefts that occurred two years apart and only one of which was violent in nature,” because “‘both offenses arose out of [defendant’s] scheme to use his position as an insider . . . to obtain money or property carried by it.’” *United States v. Smith*, No. 05 Cr. 922 (DLC), 2007 WL 980431, at *2 (S.D.N.Y. Apr. 3, 2007), *aff’d*, 348 F. App’x 636, 638 (2d Cir. 2009) (first alteration in original) (quoting *Werner*, 620 F.2d at 927).

Joinder is also proper for “distinct criminal acts where they originated from a common scheme.” *United States v. Ying Lin*, No. 15 Cr. 601 (DLI), 2018 WL 5113139, at *2 (E.D.N.Y. Oct. 19, 2018) (citing *Werner*, 620 F.2d at 927). Specifically in the context of perjury, “[t]he law in this circuit clearly supports the joinder of underlying substantive crimes with perjury counts where, as here, the false declarations concern the substantive offenses.” *United States v. Potamitis*, 739 F.2d 784, 791 (2d Cir. 1984); *see United States v. Sweig*, 441 F.2d 114, 118 (2d Cir. 1971). False statements can “concern” or be connected with substantive offenses even if they were not made as part of an investigation into the specific substantive conduct. *See United States v. Ruiz*, 894 F.2d 501, 505 (2d Cir. 1990) (joining false statements on loan applications with perjury about “attempts to secure Senate Ethics Committee approval” of “consulting fees”); *United States v. Broccolo*, 797 F. Supp. 1185, 1190-91 (S.D.N.Y. 1992) (joining fraud counts with a false statement

in a bankruptcy proceeding). Similarly, “[c]ourts have repeatedly recognized the appropriateness of trying perjury or obstruction charges together with the underlying crimes to which the perjury relates, where proof of the alleged perjury requires proof of knowledge of the underlying crime.” *United States v. Butler*, No. 04 Cr. 340, 2004 WL 2274751, at *4 (S.D.N.Y. Oct. 7, 2004) (Lynch, J.) (permitting joinder of defendants under Rule 8(b)).

In the event that properly joined counts “appear[] to prejudice a defendant or the government,” Rule 14(a) permits a court to “order separate trials of counts . . . or provide any other relief that justice requires.” Fed. R. Crim. P. 14(a). “[I]n order to prevail” on a Rule 14 motion, “the defendant must show not simply some prejudice but *substantial* prejudice.” *United States v. Sampson*, 385 F.3d 183, 190 (2d Cir. 2004) (quoting *Werner*, 620 F.2d at 928). The defendant carries this “heavy burden” because Rule 8(a) already strikes a “balance” between “considerations of economy and speed” and “possible unfairness” to the defendant. *United States v. Amato*, 15 F.3d 230, 237 (2d Cir. 1994). Accordingly, “the principles that guide the district court’s consideration of a motion for severance usually counsel denial,” *Pizarro*, 2018 WL 1737236, at *5 (alteration, internal quotation marks, and citation omitted), and severance should be granted “only if there is a serious risk that a joint trial would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence,” *Zafiro v. United States*, 506 U.S. 534, 539 (1993).⁵² But “Rule 14 does not require severance even if prejudice is shown; rather, it leaves the tailoring of the relief to be granted, if any, to the district court’s sound discretion.” *Id.* at 538-39. “[L]ess drastic measures . . . such as limiting instructions,

⁵² While *Zafiro* involved a motion to sever defendants, rather than counts, the Supreme Court’s construction of Rule 14(a) applies in either case. See *Page*, 657 F.3d at 129 (relying on *Zafiro*); *United States v. Gracesqui*, No. 10 Cr. 74 (PKC), 2015 WL 5231168, at *4 n.2 (S.D.N.Y. Sept. 8, 2015), *aff’d*, 730 F. App’x 25 (2d Cir. 2018) (citing *Page* for the proposition that *Zafiro* applies both to motions to sever counts and motions to sever defendants).

often will suffice to cure any risk of prejudice and permit joinder.” *Page*, 657 F.3d at 129 (internal quotation marks omitted).

B. Discussion

The perjury counts should be tried jointly with Counts One through Four. The offenses are of similar character, are logically connected and will be proved through much of the same evidence because the perjury counts concern at least some of the same conduct relevant to the crimes charged in Counts One through Four and, as such, are properly joined. *See generally Potamitis*, 739 F.2d at 791. Severing the counts would waste judicial resources by requiring a second trial at which the Government would offer similar proof, including by calling the same victims of sexual abuse to testify again at a second trial. The defendant has identified no prejudice sufficient to justify imposing that burden on the victims, the Court, and the Government.

First, the Government expects to prove the offenses charged in Counts One through Four and those charged in Counts Five and Six with much of the same evidence. *See United States v. Hester*, No. 19 Cr. 324 (NSR), 2020 WL 3483702, at *21 (S.D.N.Y. June 26, 2020) (“Notably, the fact that evidence of the crime charged in one count may be admissible in the Government’s direct case in the trial of the other will typically defeat the need to sever the counts.”). At trial, some of the most critical evidence that the defendant committed the offenses charged in Counts One through Four will also form the crux of the Government’s proof of the falsity of the defendant’s deposition testimony. In particular, victim testimony and related evidence offered to prove the existence of Epstein’s scheme to abuse underage girls, and Maxwell’s participation therein, will also provide much of the evidence demonstrating the falsity of the statements charged in Count Five. *Compare, e.g.*, Indictment ¶ 4(c), (e) (discussing massages resulting in sexual abuse), *with id.* ¶ 21 (denying interacting with underage girls and denying a “scheme to recruit underage girls for sexual massages”). Similarly, aspects of that proof, such as testimony regarding the sexualized

massages that were part of the scheme, will also prove the falsity of the statements charged in Count Six. Indeed, were severance to be granted, the facts involving Counts One through Four “would be central to a separate trial” on Counts Five and Six. *Butler*, 2004 WL 2274751, at *4; *see Sweig*, 441 F.2d at 118-19 (“Virtually every overt act alleged in the conspiracy count formed the subject matter of one of the eight perjury counts, and would therefore be admissible in a perjury trial to show the falsity of Sweig’s denial before the grand jury.”).

Critically, the Government expects that proof to include testimony from victims of sexual abuse. For instance, the Government anticipates that Minor Victim-2 will testify that the defendant gave her an unsolicited massage during which Minor Victim-2 was topless. Indictment ¶ 7(b). That is an overt act charged in Counts One and Three. *Id.* ¶¶ 11(c), 17(c). It is also strong evidence that the defendant’s statement “I never gave [Minor Victim-2] a massage” was false, as charged in Count Six. *Id.* ¶ 23. If the Court severs the Indictment into two trials, it will require Minor Victim-2 to testify about her abuse twice. *Cf. Richardson v. Marsh*, 481 U.S. 200, 210 (1987) (recognizing that joint trials of multiple defendants avoid “requiring victims and witnesses to repeat the inconvenience (and sometimes trauma) of testifying”).

Similarly, the defendant’s efforts to conceal her crimes by lying in a deposition is itself compelling evidence of her consciousness of guilt as to the offenses charged in Counts One through Four and indeed would almost certainly be relevant and admissible at a trial as to those counts even if severance were granted. In particular, and among other examples, the defendant’s false denial of the existence of a scheme to recruit underage girls for sexual massages, and her specific (and equally false) denials as to Minor Victim-2, would be admissible as evidence of the defendant’s consciousness of guilt, even at a trial focused exclusively on Counts One through Four. *See, e.g., United States v. Anderson*, 747 F.3d 51, 60 (2d Cir. 2014) (“[A]cts that exhibit a

consciousness of guilt, such as false exculpatory statements, may also tend to prove knowledge and intent of a conspiracy's purpose" (internal quotation marks and citations omitted)).

Second, the offenses are logically connected and are part of the same common plan or scheme. It is settled law in this Circuit that joinder of "underlying substantive crimes with perjury counts" is appropriate "where, as here, the false declarations concern the substantive offenses." *Potamitis*, 739 F.2d at 791; *see also United States v. Ruiz*, 894 F.2d 501 (2d Cir. 1992) (same). In *Ruiz*, the defendant was a New York state senator who founded a nonprofit that was developing a mall in the Bronx, and for which he provided consulting services. In 1984 and 1985, he made two loan applications for funds to invest in the project, on which he made false statements. *Id.* at 503-04. In 1986, the defendant also lied about his possession of a letter from the Senate Ethics Committee to a grand jury that was investigating his consulting activities for the nonprofit. *Id.* at 503. He was charged with two counts of false statements on the loan applications and one count of perjury, and he moved to sever the perjury charge. The district court denied the motion, explaining that, although the "alleged perjury did not occur during a specific investigation by the grand jury into the alleged bank fraud," the statements nonetheless "concerned the defendant's scheme to maximize his personal gain from the [project], as well to cover any improprieties that scheme might involve." *Broccolo*, 797 F. Supp. at 1190 (quoting *United States v. Ruiz*, 702 F. Supp. 1066, 1076-77 (S.D.N.Y. 1989)) (emphasis omitted). And the Second Circuit affirmed, explaining that the counts had "sufficient logical connection" because they all "relate to [the defendant's] extra-senatorial activities through the [nonprofit]," and therefore were "part of a common scheme or plan." *Ruiz*, 894 F.2d at 505. So too here: the defendant's perjury did not occur in the context of a grand jury investigation into the same sexual offenses charged in the Indictment, but the statements concerned those offenses and sought to conceal the defendant's role

therein. *See Broccolo*, 797 F. Supp. at 1190-91 (joining counts involving use of businesses to commit fraud with a count of falsely swearing in bankruptcy court that the defendant “had not engaged in any business activity during the preceding six years”).⁵³ Accordingly, and consistent with the holdings in *Ruiz* and *Broccolo*, this Court should deny the severance motion.

The defendant argues that the offenses are not connected because they involve different time periods. To be sure, Counts One through Four charge conduct involving certain victims from 1994 to 1997, while the perjury counts charge statements made in 2016 in a case concerning Giuffre’s abuse from 1999 to 2002. However, the specific statements charged in Count Five and Count Six directly relate to the conduct charged in Counts One through Four, including, in one instance, a specific victim identified as relevant to those counts. And those statements were not time-bound or restricted to Giuffre. For instance, the defendant denied the existence of *any* scheme to recruit underage girls for sexual massages, not the existence of such a scheme between 1999 and 2002, or a scheme specifically focused on Giuffre. The defendant also denied ever giving anyone a massage, specifically including Epstein and Minor Victim-2. She did not limit her denial to Giuffre or to a particular time period. There is, accordingly, a strong connection between the truth or falsity of the defendant’s broad denials and her acts in the period at issue in the substantive counts. The cases on which the defendant relies are factually inapposite and do not support her argument, because they involve wholly unrelated events. *See, e.g., United States v. Halper*, 590 F.2d 422, 431 (2d Cir. 1978) (severing a Medicaid fraud indictment from a tax evasion indictment where the only similarity was the defendant’s manipulation of people he had employed—different

⁵³ While the defendant may argue that the fact that her deposition, unlike *Ruiz*, did not involve criminal authorities counsels in favor of a different outcome, as discussed further below, the prospect of a criminal prosecution was nonetheless plainly on her mind at the time of the depositions, as evidenced by the myriad arguments she herself makes in support of her motions to suppress the fruits of the grand jury subpoena to Boies Schiller. (*See, e.g.,* Def. Mot. 3 at 3-4, Def. Mot. 11 at 2).

in each indictment—to his personal profit); *United States v. Brown*, No. 07-0296, 2008 WL 161146, at *5 (E.D. Pa. Jan. 16, 2008) (severing an “isolated” firearms possession charge on a certain day from other narcotics and firearms charges); *United States v. Martinez*, No. 92 Cr. 839 (SWK), 1993 WL 322768, at *8-9 (S.D.N.Y. Aug. 19, 1993) (similar).

The defendant also contends that her false statements were not connected to the substantive offenses because they were made in a civil deposition, rather than “to the grand jury or the FBI to derail its investigation.” (Def. Mot. 5 at 8). As an initial matter, and as evidenced by the defendant’s own motions to suppress the fruits of the grand jury subpoena issued to Boies Schiller, the defendant herself professes to have been concerned about the prospect of a criminal investigation at the time of her depositions, which strongly suggests that, on these facts, the distinction is of little moment. (See, e.g., Def. Mot. 3 at 3-4 (explaining that the defendant “flatly rejected” a law enforcement exception to the civil protective order); Def. Mot. 11 at 2 (arguing that the defendant “declined to invoke” her Fifth Amendment privilege against self-incrimination at the deposition after negotiating the protective order)). More important, and whatever moment that distinction may have in other contexts, it has little bearing on the severance analysis which turns instead on whether the substance of the false statement relates to the substantive offense, and is thereby provable through overlapping evidence and part of the speaker’s effort to conceal the offense. See *Ruiz*, 894 F.2d at 505; *Potamitis*, 739 F.2d at 791 (citing *United States v. Carson*, 464 F.2d 424, 436 (2d Cir. 1972); *Sweig*, 441 F.2d at 118-19) (affirming denial of a severance motion where the false statements “concern the substantive offenses” and citing cases where the perjury count’s proof overlapped with the evidence on the substantive counts). With respect to that analysis, the defendant cites no case for the proposition that the setting in which the statement is made is significant, much less determinative. Cf. *Broccolo*, 797 F. Supp. at 1190 (false statement

in bankruptcy proceeding). And the cases the defendant cites in which a perjury or false statements count was severed only underscore this point. In both cases, the statement itself concerned an entirely different subject matter, provable through largely if not entirely different evidence. See *United States v. Botti*, No. 08 Cr. 230 (CSH), 2009 WL 3157582, at *1, *5 (D. Conn. Sept. 25, 2009) (severing a structuring conspiracy and false statements related to that conspiracy from a “separate” corruption conspiracy); *United States v. Mitan*, No. 08-760, 2009 WL 2328870, at *3 (E.D. Pa. July 28, 2009) (severing counts charging a fraud scheme from perjury count for an affidavit submitted as part of a bail motion, which “was not as an attempt to cover up the scheme to defraud, but rather an attempt to show that Court had erred” in its bail decision).

Finally, the defendant argues that the counts are unrelated because the defendant’s testimony was given in response to questions “tangential to the defamation action,” and her answers “concealed” no crimes because they were “true and reflective of the poor questioning by the plaintiff’s lawyers.” (Def. Mot. 5 at 8-9). The defendant is free to make at least some of these arguments to the jury, but these assertions are not a lawful basis for severing Counts Five and Six. This is merely an attempt to refashion the defendant’s claim that she gave truthful, immaterial answers to ambiguous questions. But, as discussed in detail in Section V, those arguments have no merit.

Third, the defendant has failed to carry her heavy burden under Rule 14(a) to show prejudice. At the outset, “[t]he contention that there is some inherent prejudice in joining perjury and related counts with substantive charges has been widely rejected.” *Potamitis*, 739 F.2d at 791. And courts routinely hold that there is no prejudice where the evidence in support of the two counts is “interconnected.” *Blakney*, 941 F.2d at 116; see *Carson*, 464 F.2d at 436 (“[T]he commonality

of proof of the conspiracy and perjury crimes permitted joinder of the offenses . . . and denial of appellant’s Rule 14 pretrial motion for severance.”); *Pizarro*, 2018 WL 1737236, at *6-*7.

The defendant argues that the trial on the perjury counts will require a “full-blown re-litigation of the defamation action.” (Def. Mot. 5 at 9). That is a significant exaggeration. To litigate the perjury counts, the parties will need to present evidence about the basic substance of the civil suit—in particular, Giuffre’s allegations and the defendant’s denials—such that the jury will be able to assess materiality and the statements’ context. This can be done briefly—as stated in Section V, the Government is amenable to presenting that information through a stipulation—and, in any event, through minimal additional evidence. The stipulation or other evidence could be crafted to minimize the risk of spillover prejudice, for instance by referring to Giuffre by a pseudonym to avoid any connection she might have to testimony on the substantive counts. And any remaining prejudice could be vitiated by a limiting instruction that the jury should not consider Giuffre’s allegations as evidence of the substantive counts. *See Page*, 657 F.3d at 130-31 (approving of similar precautions when introducing evidence of a defendant’s prior felony conviction); *Pizarro*, 2018 WL 1737236, at *7; *see also Zafiro*, 506 U.S. at 540 (“[J]uries are presumed to follow their instructions.” (citation and internal quotation marks omitted)). There is every reason to think a jury could and would follow such an instruction. *See, e.g., Rivera*, 546 F.3d at 254 (using a limiting instruction to prevent spillover prejudice for counts involving the sexual exploitation of different children, especially in light of admissibility across counts); *United States v. Pena*, 932 F. Supp. 2d 464, 467 (S.D.N.Y. 2013) (using a limiting instruction to address spillover prejudice from two murder for hire conspiracies). Indeed, even if the counts were severed, as noted above, the Government would still seek to offer evidence of the defendant’s false denials of conduct relevant to Counts One through Four as evidence of her consciousness of guilt

as to those counts, and would consent to a similar limiting instruction, which a jury would be presumed to follow. And, of course, in a severed trial exclusively on the perjury counts, the defendant would surely argue that a limiting instruction is necessary to prevent the jury from concluding that the defendant's statements were false based in part on the substance of Giuffre's unproven allegations. Just as a jury would set aside the substance of Giuffre's allegations for that purpose, so can the jury set aside the substance of Giuffre's allegations for Counts One through Four.

The defendant contends instead that the perjury counts require a "collateral trial" on the truth of Giuffre's statements and resolution of "more than 50 substantive motions . . . pending before the District Court." (Def. Mot. 5 at 9-10). As described in Section V, a false statement in a civil deposition is material (1) if a "truthful answer might reasonably be calculated to lead to the discovery of evidence admissible at the trial of the underlying suit," *United States v. Kross*, 14 F.3d 751, 753 (2d Cir. 1994), or (2) if it has "a natural tendency to influence, or [be] capable of influencing, the decision of the decisionmaking body to which it was addressed," *United States v. Gaudin*, 515 U.S. 506, 509 (1995) (alteration in original) (internal quotation marks omitted). Neither of these standards requires the jury to determine whether the defendant's statements would have tipped the scales in the defamation suit or would likely have led to the discovery of evidence. *See Kungys v. United States*, 485 U.S. 759, 771 (1988) ("It has never been the test of materiality that the misrepresentation or concealment would *more likely than not* have produced an erroneous decision, or even that it would *more likely than not* have triggered an investigation."); *United States v. An Antique Platter of Gold*, 184 F.3d 131, 135-36 (2d Cir. 1999) (distinguishing the "natural tendency test" from a but-for test); *Kross*, 14 F.3d at 754 (rejecting, in a civil forfeiture case, the argument that the defendant's true testimony would not itself have justified a forfeiture because

“such evidence might lead to evidence . . . which would justify forfeiture”). The jury need not decide the outcome of the defamation case in order to evaluate whether truthful answers were capable of influencing the decisionmaker or could reasonably have led to the discovery of admissible evidence.⁵⁴

Finally, the defendant argues that severance is appropriate because including the perjury counts “will necessarily introduce into the trial the issue of Ms. Maxwell’s credibility.” (Def. Mot. 5 at 13). That is true anytime perjury or false statements counts are joined with other offenses, yet joining perjury or false statements counts to the substantive crimes they concern is the rule, not the exception. And more generally, the “adverse effect of being tried for two crimes rather than one” is not prejudice. *Werner*, 620 F.2d at 929.

Trying the perjury counts with the Mann Act counts they concern makes eminent sense. Doing so greatly advances judicial efficiency by avoiding the need for two trials at which the same evidence would be presented, including testimony from the same victims. Just as the counts are similar in character, the trial would not be unwieldy. Against these efficiencies, endorsed by the liberal joinder principles behind Rule 8, the defendant identifies at most only “generalized claim[s] of prejudice,” *Rivera*, 546 F.3d at 254, that can be cured by an appropriate limiting instruction. She thus falls far short of meeting her heavy burden, and her motion should be denied.

⁵⁴ The defendant relatedly suggests that her counsel from the defamation suit may have to testify regarding the perjury counts, denying her counsel of her choice. She has not identified what factual issue they might testify to and why it must come from one of the lawyers who represented her on both that case and this one. The Government notes, in this respect, that three of the defendant’s attorneys in this case had no involvement in the civil suit. Even if such testimony were necessary by one of the defendant’s lawyers, it would only disqualify the firm if that lawyer is called “on a significant issue other than on behalf of the client, and it is apparent that the testimony may be prejudicial to the client.” N.Y. R.P.C. 3.7(b); *see generally Murray v. Met. Life Ins. Co.*, 583 F.3d 173, 177-80 (2d Cir. 2009) (discussing the advocate-witness rule).

VII. The Indictment Contains the Elements of Each Offense and Provides the Defendant More Than Adequate Notice of the Charges Against Her

The defendant also moves to dismiss Counts One through Four on the grounds that the Indictment lacks specificity because it does not name minor victims, does not include specific dates, and uses language that the defendant claims not to understand. (Def. Mot. 12). The motion is meritless and should be denied. The plain language of the Indictment clearly and sufficiently sets forth every element of each crime charged, and the extensive details contained in the Indictment as further amplified through the voluminous discovery and the Government's various pre-trial filing describing the case and its anticipated proof at trial provide the defendant with more than sufficient notice of the charges against her.

A. Applicable Law

It is well-established that “[a]n indictment is sufficient if it contains the elements of the offense(s) charged and fairly informs a defendant of the charge(s) against which he must defend.” *United States v. Rahimi*, No. 16 Cr. 760 (RMB), 2017 WL 2984169, at *1 (S.D.N.Y. June 22, 2017) (citing *United States v. Chalmers*, 474 F. Supp. 2d 555, 559 (S.D.N.Y. 2007); *Hamling v. United States*, 418 U.S. 87, 117 (1974)). As a result, “‘an indictment need do little more than to track the language of the statute charged and state the time and place (in approximate terms) of the alleged crime’” in order to be sufficient. *United States v. Stavroulakis*, 952 F.2d 686, 693 (2d Cir. 1992) (quoting *United States v. Tramunti*, 513 F.2d 1087, 1113 (2d Cir. 1975)). As such, “[a] defendant faces a high standard in seeking to dismiss an indictment.” *United States v. Nejad*, No. 18 Cr. 224 (AJN), 2019 WL 6702361, at *3 (S.D.N.Y. Dec. 9, 2019) (internal quotation marks omitted) (quoting *United States v. Post*, 950 F. Supp. 2d 519, 527 (S.D.N.Y. 2013)). Additionally, “when deciding a motion to dismiss, a court must accept all factual allegations in the indictment as true.” *Chalmers*, 474 F. Supp. 2d at 559. “A court should not look beyond the face

of the indictment and draw inferences as to proof to be adduced at trial, for ‘the sufficiency of the evidence is not appropriately addressed on a pretrial motion to dismiss an indictment.’” *Id.* (quoting *United States v. Alfonso*, 143 F.3d 772, 776-77 (2d. Cir. 1998)).

Federal Rule of Criminal Procedure 7 states in part that an indictment “must be a plain, concise, and definite written statement of the essential facts constituting the offense charged” Fed. R. Crim. P. 7(c)(1). There are two constitutional requirements an indictment must satisfy in order to be sufficient: first, it must “contain[] the elements of the offense charged and fairly inform[] a defendant of the charge against which [s]he must defend,” and second, it must “enable[]” a defendant “to plead an acquittal or conviction in bar of future prosecutions for the same offense.” *United States v. Resendiz-Ponce*, 549 U.S. 102, 108 (2007) (internal quotation mark omitted) (quoting *Hamling*, 418 U.S. at 117). “[A]n indictment parroting the language of a federal criminal statute is often sufficient” *Id.* at 109. As a general matter, “[a]n indictment does *not* . . . ‘have to specify evidence or details of how the offence was committed.’” *United States v. Wey*, No. 15 Cr. 611 (AJN), 2017 WL 237651, at *5 (S.D.N.Y. Jan. 18, 2017) (emphasis in original) (quoting *United States v. Coffey*, 361 F. Supp. 2d 102, 111 (E.D.N.Y. 2005)). “When the charges in an indictment have stated the elements of the offense and provided even minimal protection against double jeopardy,” the Second Circuit “has repeatedly refused, in the absence of any showing of prejudice, to dismiss . . . charges for lack of specificity.” *United States v. Stringer*, 730 F.3d 120, 124 (2d Cir. 2013) (*ellipses in original*) (*internal quotation marks omitted*) (quoting *United States v. Walsh*, 194 F.3d. 37, 45 (2d Cir. 1999)).

Although courts have identified certain crimes for which an indictment may require greater specificity beyond tracking the language of the statute, such cases are “very rare.” *Stringer*, 730 F.3d at 125. For example, the Second Circuit has clarified that within this “less-common category”

is the “specification of what statements are alleged to be false, and in what respect they are false, in charges of criminal falsity,” as well as “the subject matter of the congressional inquiry” for charges of “refusal to answer questions in a congressional inquiry.” *Id.* at 125-26 (citing, *inter alia*, *Russell v. United States*, 369 U.S. 749 (1962)). Similarly, “where an indictment charges a crime that depends in turn on violation of another statute, the indictment must identify the underlying offense.” *United States v. Pirro*, 212 F.3d 86, 93 (2d Cir. 2000). When delineating the contours of this narrow category of crimes requiring additional specificity in an indictment, the Second Circuit has previously found that the failure to name a specific victim of fraud does not render an indictment inadequate under this standard. *See Stringer*, 730 F.3d at 127. In other words, absent some affirmative indication that additional specificity is required when charging a particular statute, there is no basis to conclude that an indictment need contain more than the elements of the offense and the approximate time and place of the alleged violation. *See Wey*, 2017 WL 237651 at *5 (declining to “depart from the usual sufficiency framework” where defendant “cites no authority” suggesting that the statutes at issue fall into the narrow exception to the general rule when considering motion to dismiss for lack of specificity).

B. Discussion

Because each of the four counts at issue—Counts One, Two, Three, and Four—clearly lays out each element of the charged offense and adequately informs the defendant of the accusations against her, the Indictment easily satisfies the standard for sufficiency. Tellingly, the defendant does not claim that any of these counts fails to allege an essential element or to track the language of the relevant statute. Nor could she, as the face of the Indictment not only contains each and every essential element of the crimes charged, but also goes beyond the basic requirements for pleading each charge by providing additional factual background. Instead, the defendant baldly

asserts that the crimes charged in Counts One through Four require additional specificity without citing any authority in support of such a broad claim. (*See* Def. Mot. 12 at 2). In particular, the defendant suggests that the failure to identify each minor victim by name, the presence of a date range rather than specific dates, and the use of certain language that the defendant claims not to understand render Counts One through Four so deficient that they must be dismissed. Because the defendant cites no authority indicating that violations of 18 U.S.C. §§ 371, 2422, or 2423 fall into the rare exception to “the rule that ‘an indictment need do little more than to track the language of the statute charged,’” her motion should be denied. *United States v. Murgio*, 209 F. Supp. 3d 698, 716 (S.D.N.Y. 2016) (Nathan, J.) (quoting *Stringer*, 730 F.3d at 124).

First, the use of pseudonyms to refer to minor victims of the charged conduct does not warrant dismissal of the Indictment. *See Stringer*, 730 F.3d at 124 (affirming sufficiency of fraud indictment “[n]otwithstanding its failure to specify the names of persons whose identifying documents were used” in scheme where prosecution provided victims’ names in advance of trial). The identity of a victim is not required to be included on the face of a charging instrument, and the “lack of any identity or date of birth information of the alleged victims does not warrant dismissal” of charges alleging sexual abuse. *United States v. Kidd*, 386 F. Supp.3d 364, 369 (S.D.N.Y. 2019). The defendant cites no law to the contrary and has not identified a single indictment in this District that includes the full names of minor victims of sexual abuse. Indeed, it makes good sense that a charging instrument alleging sexual abuse of minors would not include the full names of minor victims, whose privacy Congress has emphasized should be protected. *See* 18 U.S.C. § 3509(d) (delineating privacy protections for child victims and witnesses).

Judge Marrero’s decision in *Kidd*, which denied a motion to dismiss a sex trafficking charges in violation of 18 U.S.C. § 1591 where the indictment referred to victims by pseudonyms,

is particularly instructive here. *See* 386 F. Supp.3d at 366. In denying the motion to dismiss, Judge Marrero found *Stringer*'s holding "that the identity of a victim was not required to be contained in an indictment, despite the centrality of the victim's identity to the charge" to be equally applicable in a case involving sex trafficking charges. *Id.* at 369. The same logic follows here. The use of pseudonyms to refer to the minor victims of sexual abuse in Counts One through Four is no more prejudicial to the defendant here than the absence of victim identities was to the defendants in *Kidd* or *Stringer*. This is especially so when the Government has already provided the defendant with the birth month and year of each victim, provided discovery regarding each victim, and has repeatedly indicated that it will provide the defendant with the names of its witnesses, including the minor victims referenced in the Indictment, four weeks in advance of trial. Such disclosure will ensure that the defendant is readily able to bar future prosecutions for the same offense, and together with the elements of each crime and additional details contained in in the Indictment, is more than sufficient to survive a motion to dismiss.

Second, the Indictment "state[s] the time and place (in approximate terms)" of the conduct alleged in Counts One through Four. *Stavroulakis*, 952 F.2d at 693 (quoting *Tramunti*, 513 F.2d at 1113). In particular, Counts One through Four each allege that the defendant engaged in a continuing course of conduct involving the enticement and transportation of minors with intent to commit illegal sex acts, as well as conspiracies to do so, between in or about 1994 and in or about 1997. *See* Indictment ¶¶ 1, 6, 7, 9-11, 13, 15-17, 19. Courts in the Second Circuit have consistently upheld indictments containing a range of time rather than a specific date. *See, e.g., Kidd*, 386 F. Supp. 3d at 369 ("[Th]e Second Circuit routinely upholds the 'on or about' language used to describe the window of when a violation occurred." (citing *United States v. Nersesian*, 824 F.2d 1294, 1323 (2d Cir. 1987)); *United States v. Vickers*, No. 13 Cr. 128 (RJA) (HKS), 2014 WL

1838255, at *1, 4-6 (W.D.N.Y. May 8, 2014) (denying motion to dismiss indictment charging enticement of a minor, in violation of 18 U.S.C. 2423(a), “between in or about 2000 to in or about 2004,” because “the Indictment states all the elements of the crime charged by tracking the statutory language,” as well as “the nature of the criminal activity” and “the underlying facts”).

“This is especially true in cases of sexual abuse of children: allegations of sexual abuse of underage victims often proceed without specific dates of offenses,” including “[i]n cases of continuing sexual abuse,” for which “it is sufficient for the indictment to specify a period of time—rather than a specific date—in which defendant committed the acts at issue” *United States v. Young*, No. 08 Cr. 285 (KMK), 2008 WL 4178190, at *2 (S.D.N.Y. Sept. 4, 2008) (internal quotation mark omitted) (quoting *Edwards v. Mazzuca*, No. 00 Civ. 2290 (RJS), 2007 WL 2994449, at *5 (S.D.N.Y. Oct. 15, 2007)). Indeed, “[b]ecause minors often are not capable of remembering the exact dates when the alleged acts occurred, ‘fairly large time windows in the context of child abuse prosecutions are not in conflict with constitutional notice requirements.’” *Young*, 2008 WL 4178190, at *2 (quoting *Valentine v. Konteh*, 395 F.3d 626, 632 (6th Cir. 2005)). The same is true here. The minor victims in this case cannot reasonably be expected to recall the exact dates when particular instances of abuse took place during their adolescence. This is especially so for Minor Victim-1, who experienced numerous instances of abuse over multiple years of her youth. Providing the approximate ranges of dates during which the offenses took place fully satisfies the requirements of an adequately pled charging instrument. The defendant cites no authority to the contrary, and her motion to dismiss should accordingly be denied.

Third, the Indictment lists in clear detail the allegations relevant to each element of every criminal statute for which she is charged. Beyond simply “parroting the language of a federal criminal statute,” *Resendiz-Ponce*, 549 U.S. at 108, the Indictment provides extensive detail

regarding how the defendant is alleged to have committed the crimes charged in Counts One through Four. *See* Indictment ¶¶ 1-11. Indeed, “by providing Defendant with a narrative of the manner in which Defendant is alleged to have committed the charged offenses, the Indictment provides Defendant with more detail than is strictly necessary” under the governing law. *United States v. Kozel*, No. 19 Cr. 460 (KMW), 2020 WL 4751498, at *2 (S.D.N.Y. Aug. 17, 2020).

Although the defendant complains that some of the terms used in the speaking portions of the Indictment are somehow vague, she cites no authority to suggest that her difficulty comprehending basic language in portions of a charging instrument that do not speak to the elements of the offense requires dismissal.⁵⁵ Counts One and Three, charging the defendant with violations of 18 U.S.C § 371, “clearly contain[] the elements of the offense charged, fairly inform[] [her] of the charge[s] against [her], and enable[] [her] to plead an acquittal or conviction in bar of future prosecution for the same offense.” *United States v. Bunn*, 154 F. App’x 227, 229 (2d Cir. 2005). Counts Two and Four, charging violations of 18 U.S.C §2422 and § 2243, respectively, similarly contain the elements of those offenses and adequately inform the defendant of the charges

⁵⁵ Alternatively, the defendant claims that the acts listed throughout the Indictment do not constitute illegal behavior. In this vein, the defendant makes specific reference to “grooming” as conduct that is not illegal. (Def. Mot. 12 at 4). The defendant cites no authority for this argument, which is contrary to Second Circuit law. In particular, the Second Circuit has for many years found grooming behavior to be a means to “persuade, induce, or entice” minors to engage in illegal sexual activity. *See, e.g., United States v. Thompson*, 896 F.3d 155, 173 (2d Cir. 2018) (“Our precedent, however, supports applying a broad definition of enticement in this context: that definition would reasonably include Thompson’s grooming of the minor victims to act as he desired with regard to many matters over the months before he made the video.”); *United States v. Dorvee*, 616 F.3d 174, 180 (2d Cir. 2010) (“We do not believe that the district court was clearly erroneous in finding, as a matter of fact, that these images were sent as part of a grooming process to persuade the agent to engage in the type of sexual conduct depicted in the images.” (internal quotation marks and citation omitted)); *United States v. Brand*, 467 F.3d 179, 203 (2d Cir. 2006) (“Brand’s sexual advances and grooming behavior provide additional evidence in support of the jury’s finding that Brand attempted to entice a minor.”). In any event, whether grooming *alone* constitutes a crime is immaterial to the instant motion, and it will be for the jury to decide whether the evidence at trial, as a whole, establishes the elements of the crime beyond a reasonable doubt.

against her. The Indictment also cites the relevant state criminal statute under which the defendant is charged constituting “sexual activity” within the language of both § 2422 and § 2243, specifically, violations of New York Penal Law § 130.55. Indictment ¶¶ 11(b), 13, 17(b), 19. The defendant cites no authority for her suggestion that by providing additional detail regarding how the defendant committed the charged crimes, the Government is somehow required to provide even more specificity beyond the basic elements of the crimes charged. Absent any such authority, and where there is no suggestion that the Indictment fails to allege the essential elements of each crime charged, there is no basis to dismiss any of the counts in the Indictment.

For the foregoing reasons, the defendant’s sufficiency challenges to the Indictment fail as a matter of law, and her motion to dismiss Counts One through Four should be denied.

VIII. There Is No Basis to Strike Any Portion of the Indictment

The defendant moves to strike any reference to Minor Victim-3 from the Indictment, claiming that—contrary to the plain terms of the Indictment—the events involving Minor Victim-3 are unrelated to the conspiracies charged in Counts One and Three and that some of that the allegations regarding Minor Victim-3 are unduly prejudicial. (Def. Mot. 6). The motion is baseless. *First*, as the Indictment itself makes clear, the defendant’s and Epstein’s interactions with Minor Victim-3 were part of a broader scheme and agreement to entice and transport minor victims with intent to commit illegal sex acts. Even if Minor Victim-3 was not ultimately transported as a minor, the core of a conspiracy is an agreement to engage in criminal conduct; there is no legal requirement that the agreed upon crime be completed. Although Minor Victim-3’s experiences cannot alone form the basis of a timely substantive charge, both charged conspiracies include timely overt acts, and it is well established that a charged conspiracy can encompass otherwise time-barred acts so long as at least one overt act in furtherance of the

conspiracy is timely. *Second*, the description of Minor Victim-3's experiences in the Indictment is no more inflammatory or prejudicial than those regarding Minor Victim-1 and Minor Victim-2. *Finally*, even if evidence regarding Minor Victim-3 were not admissible as direct evidence of the charged conspiracies—which it is—that evidence will be admissible under Federal Rule of Evidence 404(b) to prove the defendant's knowledge, intent, and *modus operandi*. Accordingly, the motion to strike references to Minor Victim-3 as surplusage should be denied.

A. Relevant Facts

As alleged in the Indictment, Minor Victim-3 was one of the minor girls whom the defendant groomed to engage in sexual activity with Jeffrey Epstein. Minor Victim-3 was born in March of 1977. At trial, the Government expects that Minor Victim-3 will testify,⁵⁶ in substance and in part, that when she was 17 years old, she met the defendant. After meeting Minor Victim-3, the defendant befriended Minor Victim-3 by, among other things, discussing Minor Victim-3's life and family with Minor Victim-3. As a result, the defendant came to know Minor Victim-3's age. The defendant also described Jeffrey Epstein as her boyfriend and indicated that she wanted Minor Victim-3 to meet Epstein. At some point either in 1994 or 1995, the defendant invited Minor Victim-3, who was still 17 years old, to the defendant's home in London, where the defendant introduced Minor Victim-3 to Epstein. During that first visit, the defendant encouraged Minor Victim-3 to provide Epstein with a massage. During the ensuing massage, Epstein engaged in at least one sex act with Minor Victim-3. Subsequently, the defendant invited Minor Victim-3, who was still 17 years old, to return to the defendant's home in London and massage Epstein again.

⁵⁶ While the Government is proffering these facts for purposes of this Motion, the underlying information, which is contained in the FBI 302 reports of interviews with Minor Victim-3, will be produced to the defense as 3500 material in advance of trial.

Once again, the defendant encouraged Minor Victim-3 to provide a massage to Epstein. During the ensuing massage, Epstein engaged in at least one sex act with Minor Victim-3.

Following those two encounters, the defendant and Epstein invited Minor Victim-3 to travel with them to Florida, the U.S. Virgin Islands, and New York. Minor Victim-3 eventually accepted these invitations, but she does not recall whether she was 17 or 18 when she took her first trip at Epstein and the defendant's invitation. When Minor Victim-3 traveled with Epstein and the defendant, she provided additional massages to Epstein, during which he engaged in multiple sex acts with Minor Victim-3. Over the course of their interactions, the defendant made multiple statements to Minor Victim-3 reflecting the defendant's awareness that Epstein engaged in sex acts with Minor Victim-3. On at least one occasion, the defendant asked Minor Victim-3 if she knew any other young females who could engage in sex acts with Epstein.

B. Applicable Law

“Although the Federal Rules of Criminal Procedure grant the Court authority to strike surplusage from an indictment, *see* Fed. R. Crim. P. 7(d), ‘[i]t has long been the policy of courts within the Southern District to refrain from tampering with indictments.’” *United States v. Bin Laden*, 91 F. Supp. 2d 600, 621 (S.D.N.Y. 2000) (quoting *United States v. Jimenez*, 824 F. Supp. 351, 369 (S.D.N.Y. 1993)). “Motions to strike surplusage from an indictment will be granted only where the challenged allegations are ‘not relevant to the crime charged and are inflammatory or prejudicial.’” *United States v. Scarpa*, 913 F.2d 993, 1013 (2d Cir. 1990) (quoting *United States v. Napolitano*, 552 F. Supp. 465, 480 (S.D.N.Y. 1982)). “[I]f evidence of the allegation is admissible and relevant to the charge, then regardless of how prejudicial the language is, it may not be stricken.” *Id.* (brackets in original) (quoting *United States v. DePalma*, 461 F. Supp. 778, 797 (S.D.N.Y. 1978)); *see also United States v. Mulder*, 273 F.3d 91, 99 (2d Cir. 2001). “This standard is an exacting one, and only rarely is alleged surplusage stricken from an indictment.”

Murgio, 209 F. Supp. 3d at 724 (internal quotation marks omitted) (quoting *United States v. Smith*, 985 F. Supp. 2d 547, 610 (S.D.N.Y. 2014)).

In setting forth allegations in an indictment, the Government is not limited to description of only the bare elements of a crime; rather, an indictment may be used to provide background to the charged criminal conduct, to describe the circumstances, means, and methods of an offense, and to describe evidence that is otherwise admissible at trial. Simply put, “[s]tatements providing background are relevant and need not be struck.” *United States v. Mostafa*, 965 F. Supp. 2d 451, 466 (S.D.N.Y. 2013) (citing *Mulder*, 273 F.3d at 100). Allegations also will not be stricken where they elucidate the circumstances, means, and methods of a charged scheme or would be admissible, in the alternative, under Rule 404(b) of the Federal Rules of Evidence. See *United States v. Hernandez*, 85 F.3d 1023, 1030 (2d Cir. 1996) (affirming denial of motion to strike surplusage where “[d]efendants’ cocaine-related activity was clearly relevant evidence of the organizational structure and method of operation of their heroin conspiracy, and it also tended to establish the nature of the relationship between Defendants and their supplier of heroin, defendant Jose Antonio Hernandez,” and citing Rule 404(b)).

In terms of timing, “[c]ourts in this district routinely await presentation of the Government’s evidence at trial before ruling on a motion to strike.” *Mostafa*, 965 F. Supp. 2d at 467 (citing, *inter alia*, *Scarpa*, 913 F.2d at 1012); see also *United States v. Ahmed*, No. 10 Cr. 131 (PKC), 2011 WL 5041456, at *3 (S.D.N.Y. Oct. 21, 2011). As multiple courts have concluded, “[t]here is little or no purpose in attempting to predict in advance of trial what evidence will prove admissible or how specific allegations relate to the overall charges.” *Smith*, 985 F. Supp. 2d at 612 (brackets in original) (quoting *United States v. Butler*, 351 F. Supp. 121, 124 (S.D.N.Y. 2004)).

C. Discussion

The defendant's motion to strike should be denied—or at a minimum deferred until after the conclusion of the Government's direct case—because all of the challenged allegations pertain to evidence that will be relevant and admissible at trial, and are not unduly prejudicial.

First, the allegations regarding Minor Victim-3 are properly included in the Indictment's description of the conspiracies charged in Counts One and Three because evidence of those incidents is relevant and admissible at trial as direct evidence of the crimes charged. Counts One and Three allege that the defendant participated in conspiracies with Epstein both to transport minor victims and to entice minor victims to travel with the intent to commit illegal sex acts. Indictment ¶¶ 9-11, 15-17. In the course and as part of those conspiracies, the defendant groomed multiple minor victims for sexual abuse by Epstein through multiple methods, including befriending victims and encouraging minor victims to provide massages to Epstein knowing he would engage in sex acts with them. *Id.* ¶¶ 1, 4, 7, 14. As detailed in the Indictment, that grooming was a fundamental part of both conspiracies because it encouraged minor victims to be alone with and to engage in sex acts with Epstein. *Id.* ¶¶ 1, 4, 14. It follows that the defendant's role grooming Minor Victim-3 to engage in sex acts with Epstein was a part of and therefore constitutes evidence of these conspiracies. *Id.* ¶¶ 7(c), 11(d), 17(d).

The defense claims that because the Indictment does not allege that each element of substantive violations of 18 U.S.C. §§ 2422 and 2423(a) was met as to Minor Victim-3, her experiences cannot be direct evidence of the conspiracies to violate those statutes charged in Counts One and Three. But that argument ignores a fundamental tenet of conspiracy law. It is axiomatic that a conspiracy does not require a completed substantive crime. *See Salinas v. United States*, 522 U.S. 52, 65 (1997) ("It is elementary that a conspiracy may exist and be punished whether or not the substantive crime ensues, for the conspiracy is a distinct evil, dangerous to the

public, and so punishable in itself.”). Indeed, “[i]t is well settled that the essential elements of the crime of conspiracy are: (1) that the defendant agreed with at least one other person to commit an offense; (2) the defendant knowingly participated in the conspiracy with the specific intent to commit the offenses that were the objects of the conspiracy; and (3) that during the existence of the conspiracy, at least one of the overt acts set forth in the indictment was committed by one or more of the members of the conspiracy in furtherance of the objectives of the conspiracy.” *United States v. Salameh*, 152 F.3d 88, 145-46 (2d Cir. 1998).

Because a conspiracy does not require the completion of a substantive crime, it does not matter whether Minor Victim-3 was ever in fact transported as a minor, or whether the elements of the substantive crimes of transportation and enticement are satisfied as to her. *See Salinas*, 522 U.S. at 65. What matters is whether the Indictment properly alleges that the defendant agreed to participate in schemes to transport and entice minors to travel with the intent that an illegal sex act would be committed, and whether the allegations at issue are relevant and admissible evidence of that conspiracy. Here, that is plainly the case. As alleged, the defendant’s participation in recruiting and grooming Minor Victim-3 to engage in sex acts as a minor with Epstein during the period charged in the Indictment, is itself evidence of the defendant’s agreements with Epstein to identify minor girls to entice and transport for purposes of illegal sex acts.⁵⁷ Moreover, the

⁵⁷ The defendant takes issue with the Indictment’s reference to these sex acts as “abuse” because, she asserts, Minor Victim-3 was above the age of consent in the United Kingdom at the time they occurred. The description in the Indictment is factually accurate, however, because Minor Victim-3 will testify to her subjective experience of these acts with a much older man as traumatic, exploitative, and abusive at trial. While the Government will be careful to avoid suggesting to the jury that any consensual act committed after Minor Victim-3 was at or above the age of consent was itself criminal (as opposed to evidence of the charged conspiracies), to the extent defense counsel wishes to request a particular limiting instruction or to seek authorization for a particular line of cross-examination regarding the legality of any sex acts that took place in London, the appropriate forum to do so is in a motion *in limine*.

Government further expects Minor Victim-3 will testify that Maxwell and Epstein subsequently invited her to travel to Florida, the U.S. Virgin Islands, and New York, which is probative of the defendant's intent, in her initial interactions with Minor Victim-3, to entice Minor Victim-3 to travel and be transported for the purpose of engaging in sexual acts.⁵⁸ Thus, even if Minor Victim-3 did not travel as a minor, the events involving Minor Victim-3 outlined in the Indictment constitute direct and admissible evidence of the agreements between and the relationship of the defendant and Epstein. Because evidence regarding Minor Victim-3 is therefore relevant and admissible at trial, there is no basis to strike these allegations from the Indictment. *See Scarpa*, 913 F.2d at 1013. Given the relevance of these allegations, the defendant has not satisfied the "exacting" standard required to justify striking portions of an Indictment. *Murgio*, 209 F. Supp. 3d at 724 (quoting *Smith*, 985 F. Supp. 2d at 610). Accordingly, the motion should be denied, or, at the very least, deferred until "presentation of the Government's evidence at trial" after which the Court will have a full understanding of how Minor Victim-3's experiences fit into the charged conspiracies. *Mostafa*, 965 F. Supp. 2d at 467.

The fact that the Government would be precluded, by virtue of the statute of limitations, from bringing a charge based exclusively on the experience of Minor Victim-3 is immaterial. It is well-established that a prosecution for a conspiracy is timely so long as the conspiracy exists and at least one timely overt act is committed in furtherance of the conspiracy within the applicable statute of limitations. *See United States v. Salmonese*, 352 F.3d 608, 614 (2d Cir. 2003) (citing *Grunewald v. United States*, 353 U.S. 391, 396-97 (1957)); *United States v. Rutkoske*, 506 F.3d 170, 174-75 (2d Cir. 2007); *United States v. Mason*, 479 F. App'x 397, 398 (2d Cir. 2012).

⁵⁸ Minor Victim-3 has been unable to recall whether she was invited to travel when she was 17 or when she was 18 years old. Regardless, the subsequent invitation demonstrates that the grooming and sex acts in London were part of conspiracies to entice and transport minors.

Accordingly, overt acts that may, on their own, be untimely can nevertheless serve as direct evidence of the existence of a charged conspiracy. *See, e.g., United States v. Benussi*, 216 F. Supp. 2d 299, 301-07, 309 (S.D.N.Y. 2002) (admitting evidence of otherwise untimely acts during conspiracy trial); *cf. United States v. Marcus*, 628 F.3d 36, 43 (2d Cir. 2010) (declining to vacate a conviction on a statute with only prospective application when “the Government presented post-enactment evidence sufficient to satisfy the elements” in addition to evidence of relevant pre-enactment conduct). Evidence regarding Minor Victim-3 is thus admissible to prove the existence of the conspiracy, even if a conviction could not be supported based on her experiences alone.⁵⁹

The Government agrees with the defendant that Minor Victim-3 turned 25 before 2003 and, as a result, a substantive count based exclusively on conduct involving Minor Victim-3 is time-barred. As discussed above, however, the conduct involving Minor Victim-1 and Minor Victim-2 alleged in the Indictment is timely. Thus, if the jury concludes that the conspiracies existed, involved either Minor Victim-1 or Minor Victim-2, and included at least one overt act as to either Minor Victim-1 or Minor Victim-2, then Counts One and Three are not time-barred. *See Salmonese*, 352 F.3d at 614. Moreover, and so as to ensure that any count of conviction is based on timely conduct, the Government would have no objection to an appropriate instruction from

⁵⁹ As a fallback argument, the defense cites *United States v. Hsia*, 24 F. Supp. 2d 14 (D.D.C. 1998), in which a District Judge concluded that alleged overt acts involving concealment or “cover-ups” were not obviously within the scope of the charged conspiracy to defraud the United States by impairing and impeding the Immigration and Naturalization Service. *Id.* at 20, 24-26. Although the Court denied the motion to strike the alleged surplusage, it ordered the prosecution to provide a bill of particulars regarding the alleged acts of concealment. *Id.* at 26, 33. The case is readily distinguishable because the alleged surplusage in *Hsia* involved a completely different type of conduct—obstruction—than that charged in the indictment—fraud. Here, by contrast, the allegations regarding Minor Victim-3 involve conduct that falls within the heartland of the conspiracy: grooming a minor girl to engage in sex acts with Jeffrey Epstein. Moreover, in both the Indictment and in this memorandum, the Government has provided extensive detail regarding Minor Victim-3’s anticipated testimony, which avoids any concern that the defendant will be surprised at trial, which was the animating concern in *Hsia*. *See id.* at 33. As such, this motion does not offer a basis for a bill of particulars.

the Court informing the jury that, to convict on any conspiracy count, it must find at least one overt act in furtherance of the conspiracy that occurred within the statute of limitations. *See Benussi*, 216 F. Supp. 2d at 309 (describing a similar jury instruction provided for a conspiracy containing some allegations that were time-barred and others that were timely).

Second, the allegations regarding Minor Victim-3 in the Indictment are no more inflammatory or prejudicial than those describing the experiences of Minor Victim-1 and Minor Victim-2. The references to “sexual abuse” accurately describe Minor Victim-3’s experience of sex acts with Epstein as traumatic, exploitative, and abusive, and she will testify to that effect at trial. Moreover, because these acts were committed in furtherance of the criminal conspiracies charged in the Indictment, it is neither misleading nor prejudicial to imply that this activity involved illegal conduct. More to the point, because evidence regarding Minor Victim-3 “is admissible and relevant to the charge[s]” contained in Counts One and Three of the Indictment, the language describing Minor Victim-3’s experiences in the Indictment “may not be stricken” “regardless of how prejudicial the language is” *Scarpa*, 913 F.2d at 1013 (quoting *DePalma*, 461 F. Supp. at 797).

Finally, even if Minor Victim-3’s experiences did not constitute direct evidence of the crimes charged—which they do—this same evidence will also be admissible pursuant to Rule 404(b) to prove the defendant’s knowledge, intent, and *modus operandi*. Federal Rule of Evidence 404(b) provides, in pertinent part:

Evidence of any other crime, wrong, or act is not admissible to prove a person’s character in order to show that on a particular occasion the person acted in accordance with the character. This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

“[E]vidence of uncharged criminal conduct is not evidence of ‘other crimes, wrongs, or acts’ under Rule 404(b) if that conduct is ‘inextricably intertwined with the evidence regarding the charged offense.’” *United States v. Quinones*, 511 F.3d 289, 309 (2d Cir. 2007) (quoting *United States v. Towne*, 870 F.2d 880, 886 (2d Cir. 1989)). Where “the indictment contains a conspiracy charge, uncharged acts may be admissible as direct evidence of the conspiracy itself.” *United States v. Diaz*, 176 F.3d 52, 79 (2d Cir. 1999) (internal quotation marks omitted) (quoting *United States v. Miller*, 116 F.3d 641, 682 (2d Cir. 1997)); *see also United States v. Thai*, 29 F.3d 785, 812 (2d Cir. 1994). “An act that is alleged to have been done in furtherance of the alleged conspiracy . . . is not an ‘other’ act within the meaning of Rule 404(b); rather, it is part of the very act charged.” *United States v. Concepcion*, 983 F.2d 369, 392 (2d Cir. 1992).

The Second Circuit “follows the ‘inclusionary’ approach to ‘other crimes, wrongs, or acts’ evidence, under which such evidence is admissible unless it is introduced for the sole purpose of showing the defendant’s bad character, or unless it is overly prejudicial under Fed. R. Evid. 403 or not relevant under Fed. R. Evid. 402.” *United States v. Pascarella*, 84 F.3d 61, 69 (2d Cir. 1996) (internal citation omitted); *see also United States v. Paulino*, 445 F.3d 211, 221 (2d Cir. 2006); *United States v. Zackson*, 12 F.3d 1178, 1182 (2d Cir. 1993). Under this approach, uncharged acts are admissible in a conspiracy case where they are used to (i) explain the development of the illegal relationship between coconspirators; (ii) explain the mutual criminal trust that existed between coconspirators; and/or (iii) complete the story of the crime charged. *See Diaz*, 176 F.3d at 80; *United States v. Pipola*, 83 F.3d 556, 566 (2d Cir. 1996); *United States v. Rosa*, 11 F.3d 315, 334 (2d Cir. 1993). In addition, evidence of “other acts” is admissible under Rule 404(b) if it (i) is advanced for a proper purpose, “such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident,” Fed. R. Evid.

404(b)(2); (ii) is relevant to the crime for which the defendant is on trial; (iii) has probative value that is not substantially outweighed by any unfair prejudicial effect; and (iv) is admitted with a limiting instruction to the jury, if requested. See *Huddleston v. United States*, 485 U.S. 681, 691-92 (1988); *United States v. LaFlam*, 369 F.3d 153, 156 (2d Cir. 2004).

Here, evidence regarding the defendant's interactions with Minor Victim-3 is admissible to prove the defendant's knowledge, intent, and *modus operandi*, all of which are permissible purposes under Rule 404(b). Testimony regarding the defendant's efforts to recruit and encourage Minor Victim-3 to engage in sex acts with Epstein in the context of massages establishes that the defendant knew of Epstein's attraction to minor girls and knew that Epstein used massage to initiate sexual contact with minor girls. Similarly, testimony regarding the defendant's interactions with Minor Victim-3, including how the defendant befriended Minor Victim-3 and then encouraged her to engage in sex acts with Epstein, establishes that the defendant intended for minor girls to engage in sex acts with Epstein when she befriended them, invited them to travel, and arranged for their travel.⁶⁰ Finally, the details of how the defendant interacted with Minor Victim-3 demonstrates that the defendant had a specific *modus operandi* when grooming minor girls to engage in sexual activity with Epstein. As with Minor Victim-1 and Minor Victim-2, the defendant asked minor girls details about their lives, normalized sexual topics and activity, and used her presence as an adult woman to convince minor girls that the sexual activity Epstein initiated was normal and acceptable. "The similarity sufficient to admit evidence of past acts to establish a recurring *modus operandi* need not be complete; it is enough that the characteristics relied upon are sufficiently idiosyncratic to permit a fair inference of a pattern's existence." *United*

⁶⁰ Such evidence is particularly probative when it seems apparent from defense filings that the defendant plans to argue that even if she were somehow involved in transporting or traveling with minors, she had no knowledge or intent that they engage in sexual conduct with Epstein.

States v. Sliker, 751 F.2d 477, 487 (2d Cir. 1984). Here, the defendant's specific and unique approach to preparing minor girls to engage in sex acts with Epstein demonstrate the existence of such an idiosyncratic pattern warranting admission.

Other acts evidence is, like all other evidence, inadmissible under Rule 403 if its probative value is substantially outweighed by the danger of unfair prejudice. *See* Fed. R. Evid. 403. Evidence is unfairly prejudicial, however, "only when it tends to have some adverse effect upon a defendant beyond tending to prove the fact or issue that justified its admission into evidence." *United States v. Figueroa*, 618 F.2d 934, 943 (2d Cir. 1980). Other acts evidence is typically not unfairly prejudicial where it is not "any more sensational or disturbing than the crimes" with which the defendant has been charged. *United States v. Rolan-Zapata*, 916 F.2d 795, 804 (2d Cir. 1990). Here, as already discussed, evidence regarding Minor Victim-3's experiences with the defendant and Epstein are no more inflammatory or upsetting than those of Minor Victim-1 and Minor Victim-2. Those experiences include a wide range of abuse at the hands of Epstein, including abuse that the defendant witnessed and participated in herself. Evidence regarding similar events involving Minor Victim-3, who was of a similar age and experienced similar types of sexual contact, is no more "sensational or disturbing" than the other acts detailed in the Indictment. *Id.* Evidence of other acts involving the grooming or abuse of minor victims is regularly admitted for similar purposes in cases where charges allege sexual activity with minors. *See, e.g., United States v. Vickers*, 708 F. App'x 732, 737 (2d Cir. 2017) ("As to the testimony concerning Vickers' 'grooming' of his victims, we conclude that such evidence was admissible even under Rule 404(b), because it was probative of Vickers' knowledge of how to secure adolescent boys' trust so that he could sexually abuse them. We identify no abuse of discretion in the district court's decision to admit all of the challenged testimony [regarding uncharged acts of sexual abuse] under Rule

403.”); *United States v. McDarrah*, 351 F. App’x 558, 563 (2d Cir. 2009) (affirming admission pursuant to Rule 404(b) of defendant’s “e-mail responses to the Craigslist advertisements” for erotic services because the e-mails “were relevant to his knowledge and intent, because he wrote those emails to girls he knew could be minors (he enthusiastically indicated that girls younger than 18 are acceptable) and his e-mails showed his interest in actual sexual conduct”); *United States v. Brand*, No. 04 Cr. 194 (PKL), 2005 WL 77055, at *5 (S.D.N.Y. Jan. 12, 2005) (admitting “evidence that Brand exhibited an interest in child erotica and child pornography on the internet in the period leading up to the charged conduct” under Rule 404(b) because evidence was “pertinent to whether he used the internet in an attempt to engage in sexual conduct with” victim). Accordingly, Rule 403 does not bar the admission of evidence regarding Minor Victim-3, especially given its probative value in demonstrating the defendant’s knowledge, intent, and *modus operandi*.

In sum, because evidence regarding Minor Victim-3’s experience is admissible both as direct evidence of the conspiracies charged in Counts One and Three and pursuant to Rule 404(b), there is no basis to strike the allegations regarding Minor Victim-3 from the Indictment.

IX. The Defendant’s Motion to Dismiss Count One or Count Three as Multiplicitous Is Premature

The defendant moves to dismiss Counts One or Three on the ground that they are multiplicitous. (Def. Mot. 8). Because the Second Circuit has made clear that a multiplicity challenge does not become timely until after trial, this motion should be denied as premature.

A. Relevant Facts

Count One charges the defendant with participating in a conspiracy, in violation of 18 U.S.C. § 371, to transport minors with the intent to commit an illegal sex act, in violation of 18 U.S.C. § 2422. *See* Indictment ¶¶ 9-11. Count Three charges the defendant with participating in

a conspiracy, in violation of 18 U.S.C. § 371, to entice minors to travel with the intent to commit an illegal sex act, in violation of 18 U.S.C. § 2423(a). *See* Indictment ¶¶ 15-17. In other words, Count One and Count Three charge the defendant with agreeing to commit two separate and distinct federal crimes.

B. Applicable Law

The Double Jeopardy Clause of the Fifth Amendment to the Constitution “protects against multiple punishments for the same offense.” *North Carolina v. Pearce*, 395 U.S. 711, 717 (1969). Accordingly, a defendant cannot be sentenced for multiplicitous charges covering the same crime. “An indictment is multiplicitous when it charges a single offense as an offense multiple times, in separate counts, when, in law and fact, only one crime has been committed.” *United States v. Chacko*, 169 F.3d 140, 145 (2d Cir. 1999); *see also United States v. Jones*, 482 F.3d 60, 72 (2d Cir. 2006) (“A claim of multiplicity cannot succeed, however, ‘unless the charged offenses are the same in fact and in law.’” (quoting *United States v. Estrada*, 320 F.3d 173, 180 (2d Cir. 2003))). Although the Double Jeopardy Clause does not protect against simultaneous prosecutions for the same offense, a defendant does have a right not to be punished twice for the same crime. *United States v. Josephberg*, 459 F.3d 350, 355 (2d Cir. 2006) (per curiam). Accordingly, “[i]f the jury convicts on more than one multiplicitous count, the defendant’s right not to suffer multiple punishments for the same offense will be protected by having the court enter judgment on only one of the multiplicitous counts.” *Id.* Similarly, where the judgment of conviction has already been entered on multiplicitous counts, that right is protected by vacating the convictions on all but one count. *Id.*

The Second Circuit has clarified that District Courts should not rule on a motion to dismiss a charge on multiplicity grounds until the time of sentencing. *See id.* (vacating district court’s

dismissal of count as multiplicitous prior to trial, as such a determination before trial is “at best premature”). Among other reasons, courts look to “the record as a whole in determining whether an indictment is in fact multiplicitous,” and the record cannot be fully established until trial is complete. *United States v. McCourty*, 562 F.3d 458, 469 (2d Cir. 2009). Additionally, because double jeopardy is meant to protect a defendant from successive punishments for the same offense, a multiplicitous count does not violate the Clause unless and until sentence is imposed. *See Josephberg*, 459 F.3d at 355 (“Where there has been no prior conviction or acquittal, the Double Jeopardy Clause does not protect against simultaneous prosecutions for the same offense, so long as no more than one punishment is eventually imposed.”).

Following the Second Circuit’s directive, courts in this Circuit regularly defer ruling on a multiplicity motion until after the conclusion of trial. *See, e.g., United States v. Halkbank*, No. 15 Cr. 867 (RMB), 2020 WL 5849512, at *9 (S.D.N.Y. Oct. 1, 2020) (denying pretrial motion to dismiss multiplicitous count and noting that “[c]ourts in this Circuit have routinely denied pretrial motions to dismiss potentially multiplicitous counts as premature.” (quoting *United States v. Medina*, No. 13 Cr. 272 (PGG), 2014 WL 3057917, at *3 (S.D.N.Y. July 7, 2014))); *United States v. Dumitru*, No. 18 Cr. 243 (LAK), 2018 WL 3407703, at *1 (S.D.N.Y. June 26, 2018) (denying pretrial motion to dismiss multiplicitous count in light of “the Circuit’s controlling view that the question of multiplicitousness is properly considered only at a later point in the proceedings”); *United States v. Mostafa*, 965 F. Supp. 2d 451, 464 (S.D.N.Y. 2013) (“[M]ultiplicity is properly addressed by the trial court at the sentencing stage.”); *United States v. Ghavami*, No. 10 Cr. 1217 (KMW), 2012 WL 2878126, at *11 (S.D.N.Y. July 13, 2012) (“To the extent that the Indictment alleges more than one conspiracy . . . , Defendants’ multiplicity challenge is premature. Should the jury convict Defendants on what the Court ultimately determines to be multiplicitous counts,

the Court will enter judgment on only one of the multiplicitous convictions.” (citations omitted)); *United States v. Rivera*, No. 09 Cr. 619 (SJF), 2011 WL 1429125, at *4 (E.D.N.Y. Apr. 13, 2011) (“Since it is possible that the jury will convict defendants on only one (1) of the respective counts that they allege are multiplicitous, and acquit defendants on all of the counts with which they allege that count is multiplicitous, the issue of whether the counts are multiplicitous in violation of the Double Jeopardy Clause is premature at the pretrial stage.”).

C. Discussion

The defendant’s motion to dismiss Counts One or Three of the Indictment as multiplicitous is, at best, premature. Consistent with the directive of the Second Circuit, this Court should defer ruling on this motion until after the completion of trial. The additional time will ensure that the full factual record is developed before the Court conducts the multiplicity analysis, and the motion may become moot depending on the jury’s verdict.

First, the Court cannot conduct the multiplicity analysis before hearing all of the evidence regarding the charges contained in the Indictment. Prior to trial, the record will not be fully developed, and the Court cannot conduct the necessary analysis to determine whether the counts are in fact multiplicitous. Consistent with the directive of the Second Circuit and the consistent practice in this District, the Court should defer conducting any multiplicity analysis until after hearing all of the evidence at trial. *See Josephberg*, 459 F.3d at 355.

Second, the motion may become moot because it is possible that the jury could conclude that the defendant is guilty of one of the charged conspiracies but not guilty of the other. That is because each charged conspiracy alleges that the defendant agreed to violate a different criminal statute. Count One alleges that the defendant agreed to transport minors with the intent that they engage in illegal sex acts. Count Three alleges that the defendant agreed to entice minors to travel

with the intent that they engage in illegal sex acts. In other words, Count One requires proof of an agreement to transport, while Count Three requires proof of an agreement to entice. Transportation does not necessarily require enticement, and likewise enticement to travel does not necessarily require transportation. *See United States v. Griffith*, No. 99 Cr. 786 (HB), 2000 WL 1253265, at *4 (S.D.N.Y. Sept. 5, 2000) (denying post-trial motion to dismiss as multiplicitous 18 U.S.C. § 2422 transportation charge and 18 U.S.C. § 2423(a) enticement charge involving same alleged conduct and noting “[t]hat persuasion and transportation involve proof of different facts is hardly contentious”).

Here, it is possible that the jury could conclude, after hearing all the evidence, that the defendant agreed to transport one or more minors interstate, but that she did not agree to entice minors to travel. For example, the jury could theoretically conclude that although the defendant agreed to arrange transportation for a minor victim, the defendant herself did not agree to persuade or entice a minor victim to travel. Likewise, the jury could theoretically conclude that the defendant agreed to entice, or encourage, one or more minors to travel interstate, but she did not agree to actually transport or assist in the transportation itself. Although the Government expects to prove beyond a reasonable doubt that the defendant in fact agreed both to entice and to transport one or more minor victims, it is possible that the jury may reach a different conclusion. Depending on the inferences the jury draws from the evidence presented at trial, it could convict on one conspiracy count while acquitting on the other, or it could conclude that the defendant agreed both to transport and to entice, in which case it could convict on both counts. That possibility means that a motion to dismiss counts as multiplicitous is premature. Because the Government has the discretion to present to the jury both the theory that the defendant agreed to transport and the theory that the defendant agreed to entice, the defense motion is premature. *See Josephberg*, 459 F.3d at

355 (“It is well established that ‘[w]hether to prosecute and what charge to file or bring before a grand jury are decisions that generally rest in the prosecutor’s discretion,’ and ‘a defendant has no constitutional right to elect which of two applicable federal statutes shall be the basis of his indictment and prosecution’” (brackets and ellipses in original) (quoting *United States v. Batchelder*, 442 U.S. 114, 124 (1979))).

Only after the Court has heard all of the evidence at trial and received the jury’s verdict will the defense motion be ripe. Accordingly, the motion should be denied as premature.

X. The Defendant’s Various Disclosure Motions Should be Denied

Maxwell’s motions also include an assortment of requests for orders requiring the Government to make various disclosures, all of which are meritless or, at best, premature.

A. Bill of Particulars Is Not Warranted

First, the defendant moves for a bill of particulars, demanding the Government set out an array of details regarding the Government’s theory of its case and anticipated witness testimony. The defendant, like all defendants, is entitled to sufficient information to understand the charges against her, to prepare a defense, and to protect against double jeopardy. However, the Government has provided such information, and much more, in the Indictment, extensive discovery, and various pretrial filings, including this memorandum. The defendant will also receive trial exhibits, a witness list, and Jencks Act material reasonably in advance of trial. As such, she has not established an entitlement to a bill of particulars under well-established governing law.

1. Applicable Law

The proper purpose of a bill of particulars under Federal Rule of Criminal Procedure 7(f) is “to provide defendant with information about the details of the charge against him if this is

necessary to the preparation of his defense, and to avoid prejudicial surprise at trial.” *United States v. Torres*, 901 F.2d 205, 234 (2d Cir. 1990), *abrogated on other grounds by United States v. Marcus*, 628 F.3d 36, 41 (2d Cir.2010) (emphasis added) (internal quotation mark omitted). Accordingly, “[a] bill of particulars is required ‘only where the charges of the indictment are so general that they do not advise the defendant of the specific acts of which he is accused.’” *United States v. Walsh*, 194 F.3d 37, 47 (2d Cir. 1999) (quoting *Torres*, 901 F.2d at 234); *see United States v. Mahabub*, No. 13 Cr. 908 (AJN), 2014 WL 4243657, at *2 (S.D.N.Y. Aug. 26, 2014).

In exercising its broad discretion to determine whether the charges are so general that they require supplementation through a bill of particulars, the Court should consider not just the text of the Indictment, but also discovery and other information supplied to the defendant to date. *See United States v. Bortnovsky*, 820 F.2d 572, 574 (2d Cir. 1987); *see also, e.g., Pierre-Louis*, 2018 WL 4043140, at *7 (denying request for bill of particulars where indictment charged sex trafficking conspiracy spanning two decades because indictment and discovery “would suggest that defendant has enough information to apprise him of the charges with enough precision to enable him to prepare a defense, avoid unfair surprise at trial, and preclude a second prosecution for the same offense”); *United States v. Block*, No. 16 Cr. 595 (JPO), 2017 WL 1608905, at *6-7 (S.D.N.Y. Apr. 28, 2017) (denying request for bill of particulars as to alleged fraud and unindicted co-conspirators where indictment sufficiently advised defendant of nature of charges against him and described with specificity acts he allegedly committed, nature of conspiracy, and explained in language closely tracking statute crimes alleged); *United States v. Monserrate*, No. 10 Cr. 965 (CM), 2011 WL 3480957, at *4 (S.D.N.Y. Aug. 4, 2011) (denying request for bill of particulars where discovery and indictment was “sufficient to apprise the defendant of the charge” and to allow him to prepare for trial); *United States v. Trippe*, 171 F. Supp. 2d 230, 240 (S.D.N.Y. 2001)

(denying bill of particulars request in stock fraud case where indictment was fifteen pages long and substantial discovery had been provided).

Although the Government cannot provide “mountains of documents to defense counsel” as a substitute for a bill of particulars where one would otherwise be required, *see Bortnovsky*, 820 F.2d at 575, the provision of voluminous discovery in combination with some guidance about what is most relevant can vitiate a need for further particulars, *see, e.g., United States v. Mandell*, 710 F. Supp. 2d 368, 385 (S.D.N.Y. 2010) (denying request for particularization of alleged misrepresentations where the indictment was thirty-four pages long and Government had provided voluminous, organized discovery). In no event should volume of discovery alone warrant a bill of particulars; “[w]hile [a] [c]ourt may sympathize with counsel’s task of reviewing a large quantity of materials that continue to be produced,” that concern is addressed by granting the defense sufficient time in which to conduct the review in advance of trial. *See United States v. Levy*, No. 11 Cr. 62 (PAC), 2013 WL 664712, at *13 (S.D.N.Y. Feb. 25, 2013).

A bill of particulars would undoubtedly be helpful to the defense in any case. But “the law does not impose upon the Government an obligation to preview its case or expose its legal theories,” *United States v. Leonelli*, 428 F. Supp. 880, 882 (S.D.N.Y. 1977), and therefore “[t]he ultimate test must be whether the information sought is *necessary*, not whether it is helpful.” *United States v. Mitlof*, 165 F. Supp. 2d 558, 569 (S.D.N.Y. 2001) (emphasis added); *Mahabub*, 2014 WL 4243657, at *2 (“The purpose of a bill of particulars is to ensure that a defendant has the information necessary to prepare a defense, not to turn over all information that would aid the defendant.”); *United States v. Rittweger*, 259 F. Supp. 2d 275, 292-93 (S.D.N.Y. 2003) (denying bill of particulars request as “an impermissible attempt to compel the Government to provide the

evidentiary details of its case” (quoting *United States v. Biaggi*, 675 F. Supp. 790, 810 (S.D.N.Y. 1987)).

A bill of particulars should not be misused to compel the Government to disclose “the manner in which it will attempt to prove the charges, the precise manner in which the defendant committed the crime charged, or a preview of the Government’s evidence or legal theories.” *Mitlof*, 165 F. Supp. 2d at 569; *see also Torres*, 901 F.2d at 234 (“Acquisition of evidentiary detail is not the function of the bill of particulars.” (quoting *Hemphill v. United States*, 392 F.2d 45, 49 (8th Cir. 1968))). The “wheres, whens and with whoms” are “beyond the scope of a bill of particulars.” *Mitlof*, 165 F. Supp. 2d at 569 (citing *Torres*, 901 F.2d at 233-34; *Jimenez*, 824 F. Supp. 351, 363 (S.D.N.Y. 1993)); *see also, e.g., United States v. D’Amico*, 734 F. Supp. 2d 321, 335 (S.D.N.Y. 2010) (“A bill of particulars is not a general investigative tool, a discovery device or a means to compel the government to disclose evidence or witnesses to be offered prior to trial.” (quoting *United States v. Gibson*, 175 F. Supp. 2d 532, 537 (S.D.N.Y. 2001))); *United States v. Bellomo*, 263 F. Supp. 2d 561, 580 (E.D.N.Y. 2003) (“A bill of particulars is not designed to: obtain the government’s evidence; restrict the government’s evidence prior to trial; assist the defendant’s investigation; obtain the precise way in which the government intends to prove its case; interpret its evidence for the defendant, or disclose its legal theory.”); *United States v. Henry*, 861 F. Supp. 1190, 1197 (S.D.N.Y. 1994) (“This instrument should not function to disclose evidence, witnesses, and legal theories to be offered by the Government at trial or as a general investigative tool for the defense.”).

There are good reasons why bills of particulars are warranted only where the allegations in the indictment, as supplemented by discovery and other disclosures, are so general as to render it impossible to prepare a defense. Because “a bill of particulars confines the Government’s proof

to particulars furnished,” it can “restrict unduly the Government’s ability to present its case.” *Henry*, 861 F. Supp. at 1197; *see also Mitlof*, 2014 WL 4243657, at *2 (recognizing that “care must be taken” because “[t]he government’s presentation of evidence at trial is limited to the particulars contained in the bill”); *United States v. Samsonov*, No. 07 Cr. 1198 (CM), 2009 WL 176721, at *3 (S.D.N.Y. Jan. 23, 2009) (“The vehicle of a bill of particulars serves to inform a defendant of the nature of the charge, when he is otherwise insufficiently informed, and must not be misused to compel disclosure of how much the Government can prove, nor to foreclose the Government from using proof it may develop as the trial approaches.”). Moreover, where the Government’s provision of particulars is tantamount to an itemized preview of its proof, it creates the very real danger that a defendant will “tailor her testimony to explain away the Government’s case.” *Henry*, 861 F. Supp. at 1197. These concerns animate the rule that “if the defendant has been given adequate notice of the charges against her and can prepare fully for trial with reasonably diligent efforts, the Government cannot be required to disclose additional details about its case.” *Id.*

2. Discussion

There is no basis for a bill of particulars in this case. The charges against the defendant are clear from the face of the Indictment, which provides significant detail regarding the charged crimes. As is apparent from the 18-page Indictment, the charges concern the defendant’s participation in conspiracies to transport and entice minor girls to travel with the intent that they engage in illegal sex acts with Jeffrey Epstein from 1994 through 1997, and the defendant’s attempt to cover up that conduct during her civil deposition testimony in 2016. Specifically, the Indictment makes plain that the defendant is charged with engaging in a conspiracy to transport minor girls with intent that they engage in sexual activity with Epstein, engaging in a conspiracy to entice

minor girls to travel with the intent that they engage in sexual activity with Epstein, aiding and abetting the transportation and enticement of a particular minor girl interstate for the purpose of engaging in sex acts with Epstein, and lying about those same crimes during her 2016 civil deposition testimony. The charged time periods are made plain in each count, as is the statute she is accused of violating.

The speaking Indictment in this case goes above and beyond a mere recitation of the elements of each offense by detailing the defendant's specific role in the crimes charged. Among other things, it specifies three minor victims in particular and describes the steps the defendant took with respect to each as part of the charged crimes. *See, e.g.*, Indictment ¶ 7. Additionally, the Indictment details the types of sex acts that Epstein committed with the minor victims as part of the charged crimes and the locations where those acts occurred. *See, e.g., id.* ¶ 5-6. In this way, the Indictment makes clear the Government's theory that the defendant groomed three minor girls to engage in sex acts in Florida, New Mexico, New York, and London with Epstein between 1994 and 1997. The Indictment further specifies during which portion of that period each of those three victims interacted with the defendant and Epstein as minors. *See id.* ¶ 7. Additionally, the Indictment identifies the precise answers that the Government alleges constituted perjury, and alleges facts, in the earlier portions of the Indictment, that indicate how and why the Government will seek to prove the answers were false. *Compare id.* ¶¶ 21, 23 with *id.* ¶¶ 1-11. Simply put, this is not a case in which the allegations in the Indictment "are so general that they do not advise the defendant of the specific acts of which he is accused." *Walsh*, 194 F.3d at 47 (internal quotation mark omitted) (quoting *Torres*, 901 F.2d at 234). Thus, the Indictment itself provides a sufficient basis to deny the defendant's motion in its entirety. *See, e.g., United States v. Bonventre*, 646 F App'x 73, 79 (2d Cir. 2016) ("[E]videntiary detail is not the function of the bill of particulars.")

Particulars are necessary only where indictment charges are ‘so general that they do not advise the defendant of the specific acts of which he is accused.’” (internal citation omitted) (quoting *Torres*, 901 F.2d at 234; *United States v. Chen*, 378 F.3d 151, 163 (2d Cir. 2004))); *United States v. Wedd*, No. 15 Cr. 616 (KBF), 2016 WL 1055737, at *3 (S.D.N.Y. Mar. 10, 2016) (denying motion for bill of particulars where “the Indictment is a ‘speaking’ Indictment that provides a significant amount of detail as to the Government’s theory of the case and the nature of the proof that will underlie the charges at trial”).

Additional particularity relating to the details of the counts in the Indictment might be helpful for the defendant, but that is both true in every case and not the appropriate standard. Instead, the inquiry is properly focused on whether the information already available to her is so general that a bill of particulars is *necessary* to the preparation of her defense. Plainly it is not. In addition to the speaking Indictment, the defendant has received over 2.7 million pages of discovery in this case. Although that is a high volume of discovery, it is clear from the defense’s own motion that the defense has apparently already reviewed that material (at least in significant part), identified relevant materials therein, and is aware of their relevance to the allegations in the Indictment. (*See, e.g.*, Def. Mot. 10 at 6). Indeed, much of the discovery is text searchable, and the time period that each document relates to is readily ascertainable.

In this vein, the defendant has received flight records from Epstein’s private plane spanning the entire period charged in the Indictment, which reflects hundreds of private flights Epstein took during that period, including flights with the defendant and flights to the locations identified in the Indictment.⁶¹ Those records also reflect instances when one of the minor victims identified in the

⁶¹ Records of commercial flights were unavailable by the time the Government opened its investigation in this case. Accordingly, the Government has no records of commercial flights that the defendant, Epstein, or any victims may have taken during the relevant period.

Indictment traveled on the private plane during the period alleged in the Indictment. Business records from a particular educational institution reflect instances when Epstein and the defendant were present at a summer camp that same minor victim attended, which line up with flight records confirming they were in the vicinity of that camp the same summer the victim attended the camp in 1994. Diary entries identify the period when a different minor victim identified in the Indictment first met Epstein, and customs records indicate times in 1994 when Epstein and the defendant traveled internationally consistent with another minor victim's recollections. The discovery also includes contemporary photographs of each of the three victims referenced in the Indictment from the relevant time period, and the Government has provided the defense with the birth month and year of each minor victim.⁶²

In other words, as the Government has previously indicated, the discovery provides the defendant with more than sufficient information about the three minor victims to permit her to prepare for trial. The discovery also provides the defense the ability to identify specific private plane flights that are relevant to the Indictment. Any remaining detail regarding the specifics of abuse, particular interactions, and additional trips will come from witness testimony. As is to be expected when describing events more than two decades in the past, that testimony will provide approximate time periods when events occurred, rather than specific dates. Given the information the defendant already has from the discovery, the Indictment, and the Government's court filings (including this memorandum), any additional detail would essentially serve as early Jencks Act production, allowing the defendant to tailor any testimony to the Government's case. The discovery gives the defense ample information to assist in its investigation, and given the defense's

⁶² In this memorandum, the Government has also clarified that Minor Victim-3 was 17 years old at the time of the events described in the Indictment involving her. *See* Section VIII, *supra*.

apparent ability to understand who the three victims are from the productions, there is no real concern that the defense will waste efforts conducting any such investigation before receiving Jencks Act material.⁶³

Moreover, with respect to the perjury counts, to the extent there could plausibly be any remaining ambiguity about the nature of the charges, the Government has addressed and resolved such ambiguity in responding to the instant motions. In this memorandum, the Government has summarized how the defendant's false statements during her deposition were material to the pending civil litigation. *See* Section V, *supra*. Perhaps more importantly, the defendant personally participated in that civil litigation, and she is undoubtedly quite familiar with it.

Together, the discovery productions, briefing in which the Government has described aspects of its evidence and theory (*see, e.g.*, Government Memorandum in Opposition to Renewed Bail Motion, Dec. 18, 2020, Dkt. No. 100, at 8-12), the contents of this memorandum, and the details contained in the Indictment more than adequately inform the defendant of the charges against her. This is simply not a case where the "relevance of key events [are] shrouded in mystery." *See Bortnovsky*, 820 F.2d at 574. Accordingly, the Court should deny the motion for a bill of particulars.

B. The Defendant's Requests for Early Production of a Witness List and Jencks Act Material Should Be Denied

1. Applicable Law

Federal Rule of Criminal Procedure 16 "does not require the Government to furnish the names and addresses of its witnesses in general." *United States v. Bejasa*, 904 F.2d 137, 139 (2d

⁶³ Although the victims' identities are clear from the discovery, and the defendant's motion makes clear that she strongly suspects their identities, there is no basis to require the Government to turn over the names of its witnesses, including its victim-witnesses in advance of its Jencks Act production, which is customary in this District. *See* Section X.B., *infra*.

Cir. 1990). Thus, “[i]n the absence of a specific showing that disclosure [of a witness list] [is] both material to the preparation of [the] defense and reasonable in light of the circumstances surrounding [the] case,’ the request for a witness list should be denied.” *United States v. Russo*, 483 F. Supp. 2d 301, 309 (S.D.N.Y. 2007) (quoting *Bejasa*, 904 F.2d at 139-40). “Courts in the Second Circuit typically deny motions for the early disclosure of witness lists where, as here, Defendants have not made a specific showing of need.” *United States v. Rivera*, No. 16 Cr. 175 (LGS), 2017 WL 1843302, at *2 (S.D.N.Y. May 8, 2017). The claim that “given the complexity of the case, disclosure of the government witness list will level the playing field” amounts to an “abstract statement of need” that does not justify provision of a witness list. *Russo*, 483 F. Supp. 2d at 309.

The Jencks Act, 18 U.S.C. § 3500, covers disclosure of statements or reports made by Government witnesses, and the rule mandates that such materials not be the subject of discovery or inspection “until said witness has testified on direct examination in the trial of the case.” 18 U.S.C. § 3500(a); *see also United States v. Coppa*, 267 F.3d 132, 145 (2d Cir. 2001) (“[T]he Jencks Act prohibits a District Court from ordering the pretrial disclosure of witness statements.”); *United States v. Thompson*, No. 13 Cr. 378 (AJN), 2013 WL 6246489, at *9 (S.D.N.Y. Dec. 3, 2013) (denying request for early production of Jencks Act material in light of *Coppa*).

Typically in this District, and as is the case here, the Government confirms that it will produce 3500 material and *Giglio* (or impeachment) material reasonably in advance of trial, and will engage in good faith discussions with the defense regarding a schedule for pretrial disclosures. *See United States v. Sergentakis*, No. 05 Cr. 230 (JFK), 2005 WL 1994014, at *1-2 (S.D.N.Y. Aug. 17, 2005) (“18 U.S.C. § 3500(b) calls for production of Government witness statements after the witness ‘has testified on direct examination.’ The Government response . . . that ‘[c]onsistent

with the regular practice in this District, the Government intends to make Section 3500 material available to the defense at the same time as impeachment material, [and that] in order to avoid any delay in the trial, the Government will produce such material sufficiently in advance of each Government witness's testimony' . . . is more than adequate."); *United States v. Gallo*, No. 98 Cr. 338 (JGK), 1999 WL 9848, at *8 (S.D.N.Y. Jan. 11, 1999) ("[T]he Government has indicated that it is aware of its obligations under *Giglio* . . . and the Jencks Act and that it will provide the required information to the defendants in accordance with its responsibilities under *Giglio* and the Jencks Act sufficiently in advance of each witness's testimony to allow adequate time to prepare for cross-examination. These representations are sufficient.").

2. Discussion

Trial is still more than four months away. The degree of complexity to this case, and the volume of discovery, is on par with other recent high-profile trials in this District, and in those cases witnesses have typically been disclosed approximately three to four weeks before trial. *E.g.*, *Gatto*, 17 Cr. 686 (LAK); *Blaszczak*, 17 Cr. 357 (LAK); *Skelos*, 15 Cr. 317 (KMW); *Silver*, 15 Cr. 93 (VEC); *Ulbricht*, 14 Cr. 68 (KBF). As the Government has noted for some time now, the Government intends to match or even go above and beyond that practice in this case. Specifically, the Government has offered repeatedly to provide non-testifying witness statements to the defense as much as eight weeks before trial, thereby allowing extra time for the defense to determine whether it wishes to call any of the witnesses the Government does not intend to present at trial, and to provide testifying witness statements and *Giglio* material as much as four weeks in advance of trial. Given that the defense has already been able to initiate its investigation of the charges, and given that the discovery makes clear who the three minor victims are, eight weeks should be ample time to review non-testifying witness statements, and four weeks is more than enough time

to review the statements of testifying witnesses. The Government remains open to engaging in good faith discussions with the defense to mutually agree on a schedule for reciprocal pretrial disclosures.⁶⁴ Accordingly, the motion for a witness list and early production of Jencks Act material should be denied.

C. The Defendant's Additional Requests for Disclosure Should Be Denied

The defendant also makes a variety of motions seeking disclosures to which she is not entitled, all of which should be denied.

First, the defendant requests any record of interviews with the witnesses identified as "A" and "M" referenced in a 2007 *ex parte* declaration in support of USAO-SDFL's response to a motion to quash subpoenas, which the defense attached to their motion as Exhibit B. (Def. Mot. 10 at 7-8). The defense assumes that because the declaration does not specifically mention the defendant, then these two witnesses must have omitted any mention of the defendant when they were interviewed by the FBI in 2006, thereby, according to the defense, rendering any record of those interviews exculpatory. But that defense theory rests on a faulty premise. The Government has reviewed the document memorializing the FBI's interview with witness "A" in 2006 and confirmed that it *inculcates* the defendant and contains nothing exculpatory. The Government has also reviewed the document memorializing the FBI's 2006 interview with witness "M" and confirmed that it also *inculcates* the defendant. The Government has, however, identified a single line in the notes from the interview of witness "M" that could arguably be considered helpful to the defense.⁶⁵ With the possible exception of that one line, there is nothing exculpatory contained

⁶⁴ The Government has requested reciprocal discovery from the defendant and, to date, she has produced nothing.

⁶⁵ In particular, on page 12 of the notes from this 2006 interview, a single line indicates that witness "M" stated, "rumor is that JE is gay," an apparent reference to Jeffrey Epstein's rumored sexual

in the record regarding statements made by witness “M” in 2006. Accordingly, the records of these interviews constitute witness statements covered by the Jencks Act and are not subject to disclosure by statute until after each witness has completed direct examination at trial. *See* 18 U.S.C. § 3500. As noted above, however, the Government fully intends to provide all Jencks Act material of both testifying and non-testifying witnesses, which will of course include the records relating to these interviews, to the defense multiple weeks in advance of trial. The Government respectfully submits that is sufficient to meet its obligations with respect to these documents, and the defendant’s motion for their immediate disclosure should be denied.

Second, the defendant’s request for an unredacted copy of the FBI report attached to the Defense Motion as Exhibit C should be denied as moot because the Government has already produced an unredacted copy of that report to the defense. (Def. Mot. 10 at 8-9). Specifically, the document was produced *without* redactions under bates numbers SDNY_GM_00380550 through SDNY_GM_00380554 as part of the Government’s discovery production dated November 9, 2020.⁶⁶ This motion should accordingly be denied as moot.

Third, the defendant’s request for unredacted copies of the FBI report regarding the March 17, 2011 interview of Virginia Roberts is based purely on her speculation that the redacted portions of those materials contain exculpatory information. (Def. Mot. 10 at 8-9). Once again, the

orientation. Out of an abundance of caution, today the Government has informed defense counsel of this single line in the notes and has provided defense counsel with the full name of witness “M.”

⁶⁶ Notably, the unredacted report does *not* contain any statements from either of the witnesses identified as “A” or “M” in the affidavit, demonstrating that defense counsel’s speculation about supposed *Brady* material lurking beneath redactions is inaccurate. The redacted copy defense counsel attached as Exhibit C was recovered during the execution of a search warrant for one of Epstein’s devices and was produced to defense counsel in the form in which it was recovered from the device. In other words, defense counsel has received two copies of this same document: the redacted version that Epstein had on one of his devices, and the unredacted version from the FBI’s files.

Government has reviewed the full report and confirmed that there is nothing exculpatory contained therein. To the contrary, the report *inculcates* the defendant. Accordingly, the defendant is not entitled to its immediate disclosure. The Government will produce an unredacted version of this document together with all other witness statements in advance of trial.⁶⁷

Fourth, the defense requests production of pages from a personal diary that is in the custody of a civilian third party and is not in the custody or control of the Government. (Def. Mot. 10 at 10). Leaving aside the fact that the defense cites no authority for the proposition that the Government has an obligation to obtain the personal papers of a third party, *see United States v. Collins*, 409 F. Supp. 3d 228, 239 (S.D.N.Y. 2019) (“The Government’s ‘*Brady* obligations extend only to materials within prosecutors’ possession, custody or control or, in appropriate cases, that of the Department of Justice, perhaps another part of the Executive Branch, or a comparable state authority involved in the federal prosecution.” (quoting *United States v. Blaszcak*, 308 F. Supp. 3d 736, 742 (S.D.N.Y. 2018))), the Government has already represented that it has asked the third party at issue about the materials the defendant purports to seek and that no such materials exist. In particular, to the extent the defense is concerned with whether there are diary entries from the spring of 1996, the Government has already indicated in response to the defendant’s second bail motion that it is aware of none. (See Dkt. No. 100 at 11 n. 2 (“Because this victim stopped writing in her journal about a month after that first meeting with Epstein, there are no entries regarding the subsequent trip she took months later to visit Epstein, during which she met the defendant. This victim provided the Government with copies of her journal entries relating to Epstein and informed the Government that the remaining entries are personal in nature and have nothing to do with

⁶⁷ As is the case with the other redacted document referenced in this motion, the redacted copy defense counsel attached as Exhibit D was recovered during the execution of a search warrant for one of Epstein’s devices and was produced to defense counsel in the form in which it was recovered from the device.

Epstein or the defendant.”)). In other words, the defendant again seeks supposedly exculpatory evidence that does not exist. The defendant offers no basis on which to conclude that this representation is false or that any such evidence does in fact exist. As such, this motion should be denied.

Fifth, the defendant asks this Court, again without citing any legal authority, to order the Government to produce copies of *all* subpoenas it has issued for the defendant’s records as part of its investigation in this case. (Def. Mot. 10 at 11). This incredibly broad request is nothing more than a fishing expedition inappropriately seeking the details of investigative requests made through the grand jury process. The defense has cited no legal basis for the Court to direct the Government to provide the defense with copies of the subpoenas themselves (as opposed to records or other materials received in response to such subpoenas), let alone *every subpoena* issued for the defendant’s records during a multi-year and ongoing grand jury investigation. The types of requests issued by the grand jury have no conceivable bearing on the defense or on any motion the defense may seek to bring. The Government has already produced to the defense all discoverable material that it has received in response to subpoenas issued to date during this investigation. In the absence of any legal authority justifying this request, it should be denied. Additionally, for the reasons discussed above in Sections I and IV, the defendant is not entitled to discovery or a hearing relating to her motion to dismiss the Indictment based on the NPA or her motion to suppress subpoena returns.

Sixth, the defendant asks the Court to direct the Government to immediately disclose any *Brady* and *Giglio* material. (Def. Mot. 10 at 11-13). The motion for disclosure of *Brady* material should be denied as moot because the Government has conducted a search for any such material and has already disclosed any potentially exculpatory information in its possession of which it is

aware, consistent with the Rule 5(f) *Brady* order previously issued by the Court in this case. *See* Fed. R. Crim. P. 5(f); Dkt. No. 68. The Government recognizes its continuing obligation to disclose any *Brady* material, and to make a diligent search for any relevant material that may be in the possession of the prosecution team, including investigating agents and officers. As the Government has already emphasized in this case, the Government takes its disclosure obligations very seriously and has committed to being transparent with the Court and the defense regarding its approach to obtaining and reviewing files, including other agency files, that may be relevant to this case. (*See, e.g.*, Gov't Letter dated October 7, 2020, Dkt. No. 63). Consistent with that commitment, the Government has completed an initial review of its files for *Brady* material and Rule 16 material and has produced more than 2.7 million pages of discovery as a result of that review. These productions have included specific disclosures of certain witness statements that may arguably be exculpatory. The Government also intends to produce all statements and potential impeachment material in its possession regarding any potential witness identified during its investigation, including those individuals whom the Government does not intend to call at trial. As discussed below, the Government is in the process of reviewing all files in its possession for potential impeachment material. The Government remains cognizant of its *Brady* obligations and will promptly produce any potentially exculpatory material if any is identified during that review.

The Government is not currently aware of any undisclosed *Brady* material in its possession, but it will certainly provide timely disclosure of any additional *Brady* material if any such material comes to light. Courts in this Circuit routinely deny specific requests for *Brady* material where, as here, the Government has made a good-faith representation to the court and defense counsel that it recognizes and has complied with its disclosure obligations under *Brady*. *See, e.g., Thompson*, 2013 WL 6246489 at *9 (“In light of the Government's ‘good-faith representation to

the court and defense counsel that it recognizes and has complied with its disclosure obligations under *Brady*,’ defendants’ request for immediate or otherwise early production of *Brady* materials is denied.” (internal citation omitted) (quoting *United States v. Perez*, 940 F. Supp. 540, 553 (S.D.N.Y.1996)); *Gallo*, 1999 WL 9848, at *8 (denying defendant’s motion to compel production of purported *Brady* material based on Government’s representations that “it is aware of its obligations under *Brady* . . . and will produce any *Brady* material to the defense well before trial”); *United States v. Campo Flores*, No. 15 Cr. 765 (PAC), 2016 WL 5946472, at *11 (S.D.N.Y. Oct. 12, 2016) (“The Government represents that it is aware of its obligation under *Brady*; that it has complied; and will continue to comply. That is sufficient to deny Defendants’ motion for *Brady* relief.” (internal citations omitted)). Given the Government’s extensive efforts to review its files for any material warranting disclosure, and its commitment to continue meeting its disclosure obligations, the motion should be denied.

For similar reasons, the motion for disclosure of *Giglio* material should be denied as premature. The Government is fully aware of its obligation to disclose impeachment material, is in the process of reviewing all files in its possession for any such material, and will produce any such material several weeks in advance of trial. As noted above, that is consistent with governing law in this Circuit, and the defendant cites no authority for the proposition that she is entitled to such material as much as four months in advance of trial. Courts in this Circuit have repeatedly refused to compel disclosure of impeachment or *Giglio* material well in advance of trial, and the defense has provided no particularized basis for even earlier disclosure here. *See United States v. Nixon*, 418 U.S. 683, 701 (1974) (“Generally, the need for evidence to impeach witnesses is insufficient to require its production in advance of trial.”); *Campo Flores*, 2016 WL 5946472, at *11 (“The Government has represented that it will make impeachment material relating to its

anticipated witnesses available . . . ten days before trial. There is no need to depart from the customary rule in this district of disclosure shortly before trial.”); *United States v. Seabrook*, No. 10 Cr. 87 (DAB), 2010 WL 5174353, at *4 (S.D.N.Y. Dec. 14, 2010) (“The Government represents to the Court that it is aware of its *Brady*, *Giglio*, Jencks Act, and 404(b) obligations and will comply with them in a timely fashion, as appropriate. Based on the Government’s representations, and on the current posture of this case, the Court expects that the Government will comply timely with all of its obligations under *Brady*, *Giglio*, the Jencks Act, and Rule 404(b), and does not find a need to order compliance at this time.” (internal citation omitted)); *Russo*, 483 F. Supp. 2d at 308 (“Here the government has represented that it intends to produce *Giglio* material no later than the Friday of the week before a witness is scheduled to testify at trial, in accordance with its usual practice. To the extent that the government’s disclosure in this case proves unusually voluminous or complex, the government has in good-faith represented that it intends to produce *Giglio* material sufficiently in advance of their witnesses’ testimony so as to avoid any delay in trial. At the time of those disclosures, to the extent that Defendants feel that additional time is necessary given the volume or complexity of the materials provided, the Court will consider applications to continue or recall witnesses. It is unnecessary, however, to order early disclosure at this time.”); *United States v. Canter*, 338 F. Supp. 2d 460, 461-62 (S.D.N.Y. 2004) (denying analogous motion and noting that “[i]t has been the practice of this Court and of other courts in this district to require that the Government produce these materials a few days before the start of trial”). Because the Government has committed to providing the defense with *Giglio* material multiple weeks in advance of trial, which is ample time for the defense to prepare its cross-examination of the Government’s witnesses, this motion should be denied.

Seventh, the defendant seeks a proffer of all co-conspirator statements that the Government intends to offer at trial pursuant to Federal Rule of Evidence 801(d)(2)(E). (Def. Mot. 10 at 13-14). In making this motion, the defense cites authority confirming that co-conspirator statements may be admitted at trial on a conditional basis without the need for any pretrial consideration of their admissibility. *See United States v. Tracy*, 12 F.3d 1186, 1199 (2d Cir. 1993) (“The decision as to whether the four prerequisites have been met, like all other preliminary questions of admissibility, is to be made by the court. If the government succeeds in persuading the court that the conditionally admitted coconspirator statements were made during and in furtherance of a conspiracy of which both the declarant and the defendant were members, the statements are allowed to go to the jury. If the court is not so persuaded, it either should instruct the jury to disregard the statements, or, if those statements were ‘so large a proportion of the proof as to render a cautionary instruction of doubtful utility,’ should declare a mistrial.” (internal citations omitted) (quoting *United States v. Geaney*, 417 F.2d 1116, 1120 (2d Cir. 1969))). Indeed, the Second Circuit has rejected the suggestion that non-exculpatory co-conspirator statements are discoverable under Rule 16 or by any means other than the Jencks Act. *See In re U.S.*, 834 F.2d 283, 284-87 (2d Cir. 1987) (issuing a writ of mandamus reversing District Court’s order directing the Government “to produce all oral statement made by the defendants and coconspirators that the Government planned to offer at trial as admissions of a defendant” under Fed. R. Evid. 801). Consistent with the Government’s intention to produce Jencks Act material several weeks in advance of trial, the defense will receive notice of any co-conspirator statements that the Government may seek to introduce through witness statements with sufficient time to raise any objections with the Court. Accordingly, this motion should be denied

Finally, the defendant requests early disclosure of Rule 404(b) material that the Government may seek to introduce at trial. (Def. Mot. 10 at 17). As is customary in this district, the Government will provide notice to the defense of its intent to use any such evidence at least 45 days in advance of trial, which will leave sufficient time for the defense may file any motions *in limine* to be considered at the final pretrial conference. See *Thompson*, 2013 WL 6246489 at *9 (“The Government has represented that it will disclose the substance of [the 404(b) evidence it intends to introduce at trial] . . . in a timely fashion in order to permit the defendants the opportunity to challenge admission and to permit the Court to make an appropriate finding. This is all that Rule 404(b) requires.” (alterations in original) (internal citation omitted)); *United States v. Tranquillo*, 606 F. Supp. 2d 370, 383 (S.D.N.Y. 2009) (“The Government has indicated that it will make the required disclosure two weeks prior to trial, a practice that typically comports with Rule 404(b)); *United States v. Fennell*, 496 F. Supp. 2d 279, 284 (S.D.N.Y. 2007) (“The government has in good faith noted its obligations under Rule 404(b), and indicated that it intends to provide notice of the 404(b) evidence it intends to introduce two weeks before the beginning of trial. There is therefore no need to issue the order Defendant seeks.”). Accordingly, this motion should be denied.

XI. The Use of a Grand Jury Siting in White Plains Was Entirely Proper

On June 29, 2020, amidst a global pandemic that suspended grand juries across the country, the Government sought and obtained an indictment from a grand jury of the Southern District of New York (the “Southern District” or “SDNY”) sitting in White Plains. The defendant now challenges the pool from which that grand jury was drawn, alleging that it does not reflect a “fair-cross section of the community,” and moves to dismiss the Indictment under the Sixth Amendment. (Def. Mot. 9 at 1). As set forth below, the defendant’s arguments rely on faulty

premises, and at any rate fail to meet the elements of a claim under the Sixth Amendment. Therefore, the defendant's motion must be denied.

A. Background

1. The SDNY and Local Rules for the Division of Business

The defendant's brief repeatedly uses the term "Division" to describe a "White Plains Division" and a "Manhattan Division." (*See, e.g.*, Def. Mot. 9 at 2 ("On June 29, 2020, the government filed a sealed indictment of Ms. Maxwell in the Manhattan Division of this Court. The government has conceded that Ms. Maxwell's indictment was obtained using a grand jury seated in White Plains, apparently with jurors drawn exclusively from the White Plains Division.")). Her use of the term "division" is imprecise and attributes legal significance where there is none. Understanding how that is so requires some background.

District courts in each state in the United States are prescribed by statute. United States district courts in New York State are divided between four districts: Northern, Southern, Eastern and Western. 28 U.S.C. § 112. While certain districts in other states are further divided into "divisions" by statute, *see, e.g., id.* § 81 (dividing Alabama into three "districts" and multiple "divisions" within each district), the federal districts in New York State are not so divided. That is, in the Southern District, no "divisions" have been created by statute. *Id.* § 112(b). The statute provides only that "Court for the Southern District shall be held at New York, White Plains, and in the Middletown-Wallkill area of Orange County or such nearby location as may be deemed appropriate." *Id.*

In the Southern District, the only authority determining whether particular cases are heard in the Manhattan or White Plains courthouse is the SDNY Business Division Rules. These rules begin with an important preface: they "shall not be deemed to vest any rights in litigants"

SDNY Business Division Rules, available at https://www.nysd.uscourts.gov/sites/default/files/local_rules/rules-2018-10-29.pdf. Moreover, the Rules do not describe—much less limit—what matters may be heard by what grand jury. Cf. SDNY Business Division Rule 6 (describing proceedings *after* an indictment has been returned). Rather, the Rules provide only that *once an indictment is returned*, “[t]he U.S. attorney designates on the criminal cover sheet that the case is to be assigned to White Plains if the crime was allegedly committed in whole or in predominant part in the Northern Counties.” SDNY Business Division Rule 18(b)). Furthermore, the Rules specifically contemplate that cases may be reassigned from one courthouse to another. SDNY Business Division Rule 19. Consistent with these Rules, it is common for cases to be indicted by grand juries sitting in the White Plains courthouse and tried in the Manhattan courthouse. See, e.g., *United States v. Israel*, 05 Cr. 1039 (CM), Dkt. No. 25; *United States v. Cromitie, et al.*, 09 Cr. 558 (CM), Dkt. No. 183, 200; *United States v. Annabi*, 10 Cr. 07 (CM), Dkt. No. 45; *United States v. Arici*, 12 Cr. 24 (LAP), Dkt. No. 115, 117; *United States v. Reeves, et al.*, 16 Cr. 372 (VEC), Dkt. No. 51; *United States v. Guerrier*, 18 Cr. 284 (JSR), Dkt. No. 98.

2. The SDNY Jury Plan

The Jury Selection and Service Act of 1968, 28 U.S.C. § 1861 *et seq.* (the “JSSA”), provides the structure for the selection of juries in federal district courts. The JSSA requires each district to “devise and place into operation a written plan for random selection of grand and petit jurors” 28 U.S.C. § 1863(a). Each district in New York selects grand and petit juries pursuant to a plan adopted by the judges of the district and approved by the Judicial Conference of the Second Circuit. *Id.*; see also *United States v. Bahna*, 68 F.3d 19, 23 (2d Cir. 1995). The plan for the Southern District has been in place since February 2009. See Amended Plan for the Random Selection of Grand and Petit Jurors in the Southern District of New York, available at

https://www.nysd.uscourts.gov/sites/default/files/pdf/juryplan_feb_2009.pdf (the “SDNY Jury Plan,” or the “Plan”).

Under the terms of the SDNY Jury Plan, the initial selection of persons to be considered for service as grand and petit jurors are made at random from voter registration lists. SDNY Jury Plan at Art. III.A. Two Master Jury Wheels are constructed from these lists: one for the Manhattan courthouse and one for the White Plains courthouse. *Id.* at Art. III.B. The Manhattan Master Jury Wheel draws from voter lists from the following counties: New York, Bronx, Westchester, Putnam, and Rockland. *See id.* at Art. III.C. The White Plains Master Jury Wheel draws from voter lists from the following counties: Westchester, Putnam, Rockland, Orange, Sullivan, and Dutchess. *See id.* Both Master Jury Wheels are emptied and refilled no later than September 1 following the date of each Presidential Election. *Id.* at Art. III.B.

To meet anticipated demand for jurors, names are drawn randomly from the Master Jury Wheels. *Id.* at Art. III.D. These individuals are sent a questionnaire to examine their qualifications and availability for jury service. *Id.* Pursuant to 28 U.S.C. § 1865(b), all persons are qualified for jury service unless he or she:

- (1) Is not a citizen of the United States at least eighteen years old who has resided for a period of one year within the judicial district;
- (2) Is unable to read, write, and understand English with a degree of proficiency sufficient to fill out the juror qualification questionnaire;
- (3) Is unable to speak English;
- (4) Is incapable, by mental or physical infirmity, to render satisfactory jury service; or
- (5) Has a charge pending for the commission of, or has been convicted in a State or Federal court, of a felony and his or her civil rights have not been restored.

Id. at Art. VII. Additionally, certain persons are declared exempt from jury service, including active service members in the Armed Forces of the United States, members of fire or police

departments, and public officers in the executive, legislative, or judicial branches of the State or Federal Government who are actively engaged in the performance of official duties. *Id.* at Art. V; 28 U.S.C. § 1863(b)(6). Finally, because jury service for certain groups of individuals would “entail undue hardship or extreme inconvenience,” those individuals are excused or deferred upon individual request. SDNY Jury Plan at Art. VI. These groups include:

- (1) Persons over 70 years of age;
- (2) Persons having legal custody and active daily care of a child under the age of 12, or who are essential to the daily care of aged or infirm persons;
- (3) Persons who have satisfactorily served as grand or petit jurors in a State or Federal court within the last four years;
- (4) Volunteer safety personnel; and
- (5) Persons as to whom a judge finds, for any other reason, that jury service would constitute an undue hardship and extreme inconvenience.

Id.

The names of individuals who are determined to be qualified to serve as jurors, and are not “exempt, excused, or deferred,” comprise the Qualified Jury Wheels—one for service at the Manhattan courthouse and one for service at the White Plains courthouse. *Id.*, Art. IV.A-B. When jurors are needed, names are drawn randomly from the Qualified Jury Wheels, and summonses are sent to those whose names are drawn. *Id.*, Art. IV.C. After being summoned, these individuals are randomly assigned to jury panels as needed, for individual trials and grand juries at the courthouse corresponding to the Qualified Wheel from which they were drawn. *Id.*

B. Applicable Law

“The Sixth Amendment guarantees a criminal defendant a jury selected from a fair cross section of the community.” *United States v. Rioux*, 97 F.3d 648, 654 (2d Cir. 1996). In *Duren v. Missouri*, the Supreme Court articulated a three part test that defendants must meet in order to

establish a prima facie violation of the fair cross-section requirement: (1) the excluded group is “distinctive”; (2) “representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community;” and (3) the “underrepresentation is due to systematic exclusion of the group in the jury-selection process.” 439 U.S. 357, 364 (1979).

C. Discussion

The Government’s decision to seek an indictment of the defendant from a grand jury sitting in White Plains was entirely appropriate and consistent with the Constitution, the JSSA, and the SDNY local rules. The defendant’s claims to the contrary rest on a faulty premise: That a defendant who is likely to be tried in the Manhattan courthouse must be indicted by a grand jury sitting in that same courthouse. That is not the law. *See* Section XI.C.1, *infra*.

That foundational error is fatal to the defendant’s fair cross-section claim. When the proper comparators are considered—the White Plains Master (or Qualified) Wheels to the voting age population of the counties from which juries in White Plains are drawn, rather than the defendant’s apples-to-oranges comparison of the White Plains Qualified Jury Wheel to the population of the Manhattan “Division”—the defendant fails to establish unfair underrepresentation under the second prong of the *Duren* test. Moreover, the defendant has not established that any disparity resulted from systemic exclusion of a particular group. Accordingly, the motion should be denied.

1. The Defendant Was Properly Indicted by a Grand Jury Sitting in White Plains

At the heart of the defendant’s fair cross-section claim is her contention that the Government seeking an indictment from a grand jury sitting in White Plains—which was the only

available grand jury that day, due to the global pandemic⁶⁸—“was a deviation from the established practice of indicting defendants in the division where the offense is alleged to have occurred and where the case will be tried.” (Def. Mot. 9 at 2). Because the offense is alleged to have occurred in the “Manhattan Division” and the defendant assumes that her jury trial will occur there too, she argues that the “appropriate comparison,” for the purpose of her fair cross-section claim, “is therefore between the Manhattan Division and the qualified wheel for White Plains.” (Def. Mot. 9 at 6). This premise is faulty.

“It is well-settled that neither the jury selection statute nor the Constitution requires that jurors be drawn from an entire district.” *Bahna*, 68 F.3d at 24 (collecting cases); *see also United States v. Plaza-Andrades*, 507 F. App’x 22, 26 (2d Cir. 2013) (“[O]ur precedent makes clear that the Sixth Amendment does not entitle a defendant to be tried in a geographic location any more

⁶⁸ This case was indicted on June 29, 2020, on which date the grand jury sitting in White Plains was the only available grand jury in the District. Beginning on or about June 25, 2020, grand jury quorums returned in Manhattan, but with substantially less availability than before the pandemic. As a result, the Government has sought indictments from grand juries sitting in White Plains and Manhattan, as availability permits. In this instance, the Government was prepared to indict on June 29, 2020, and the only grand jury available in this District on that day sat in White Plains. The global pandemic’s effect on grand jury availability continues to evolve, but at no point have grand juries in White Plains or Manhattan resumed normal activity.

The defendant speculates that the Government sought an indictment on June 29, 2020 because of some arbitrary desire to arrest the defendant on July 2, 2020, one year to the day after a grand jury returned a sealed indictment charging Jeffrey Epstein with federal crimes on July 2, 2019. (*See, e.g.,* Def. Mot. 9 at 1, 8). Setting aside the silliness of marking the anniversary of an indictment’s return, as opposed to the anniversary of the arrest itself, which took place on July 6, 2019, there is no reality in the defense’s conspiracy theories. As the defense knows full well, the Government attempted to locate and arrest the defendant on July 1, 2020 but was unable to confirm her location until obtaining cellphone location data identifying her location and enabling her arrest on July 2, 2020. The defense knows this because they have the warrant application that the Government submitted on July 1, 2020 for the defendant’s cellphone location information, in which the Government stated that it had been unable to confirm the defendant’s location. In other words, the Government indicted the defendant as soon as it was prepared to present the evidence it had gathered to a grand jury, and the Government arrested the defendant as soon as it was able to locate her after obtaining that indictment.

specific than the District where the offense was allegedly committed.”). Rather, “[c]ourts have broad latitude in defining the geographic area from which juries will be selected.” *United States v. Yonkers Contracting Co., Inc.*, 682 F. Supp. 757, 768 (S.D.N.Y. 1988). Consistent with the foregoing, the SDNY Jury Plan creates two separate Master Wheels—one for the White Plains courthouse and one for the Manhattan courthouse, each of which draws from certain counties, with some overlapping counties. SDNY Jury Plan Art. III.B, III.C. This is perfectly consistent with the JSSA, *see* 28 U.S.C. § 1869(e), and with longstanding precedent, as Judge Hand has explained:

[T]he district and circuit courts have had power since the first Judiciary Act of 1789 to divide a district territorially in the interest of an impartial trial, of economy, and of lessening the burden of attendance. There cannot be the faintest question of the constitutionality of this statute; the courts have again and again recognized its validity. Furthermore, it would be impossible in practice to administer it, if it were a condition that that the divisions made must be so homogeneous that they showed an equal percentage of all possible groups. There are probably no districts in the Union, which can be divided without disclosing in the sections different racial, religious, political, social or economic percentages. To demand that they shall not, would be a fantastic pedantry which would serve no purpose and would put an end to the statute.

United States v. Gottfried, 165 F.2d 360, 364 (2d Cir. 1948); *accord Bahna*, 68 F.3d at 24-25.

There is accordingly no constitutional or statutory basis for the defendant’s claimed entitlement to a grand jury drawn from the population of the same “division” in which the offense occurred and she assumes she will ultimately be tried. To the contrary, the Second Circuit has rejected a similar claim. In *Bahna*, a defendant in the Eastern District of New York was initially convicted at a trial held at the Brooklyn courthouse; after that conviction was vacated, he was again convicted, this time at a trial held at the Uniondale courthouse. 68 F.3d at 20. Under the relevant jury plan, jurors for trials held in Brooklyn were drawn from the entire Eastern District, while jurors for trials held in the “Long Island Division,” which included the Uniondale

courthouse, were drawn from Nassau and Suffolk Counties. *Id.* at 24. The defendant argued that the district court erred by selecting the jury from the “Long Island Division” wheel because there was under-representation of Blacks and Hispanics in that “division” as compared to the Eastern District as a whole. *Id.* at 23-24. The Second Circuit rejected the argument, finding that it “[wa]s based upon an improper premise.” *Id.* at 24. Contrary to the defendant’s claims, “[w]here a jury venire is drawn from a properly designated division, we look to *that division* to see whether there has been any unlawful or unconstitutional treatment of minorities.” *Id.* (emphasis added).

Consistent with *Bahna*, courts have repeatedly found that defendants in criminal cases have no constitutional or statutory right to a jury drawn from the entire district or from a particular geographic area within a district, such as the county or “division” where the offense was committed. *See, e.g., Rutenberg v. United States*, 245 U.S. 480, 482 (1918) (rejecting claim that defendant had Sixth Amendment right to jury drawn from entire district); *United States v. Miller*, 116 F.3d 641, 659 (2d Cir. 1997) (“Th[e] [Sixth] Amendment’s guarantees of an impartial jury ‘of the State and district’ in which the crime was committed does not require a narrower geographical focus than the district itself.”); *United States v. Richardson*, 537 F.3d 951, 959 (8th Cir. 2008) (a criminal defendant “does not have a right to have his trial in or jurors summoned from a particular division of the state and district where the crime was committed”); *United States v. Herbert*, 698 F.2d 981, 984 (9th Cir. 1983) (finding that “[a] petit jury may be drawn constitutionally from only one division and not the whole district”); *Zicarelli v. Dietz*, 633 F.2d 312, 318 (3d Cir. 1980) (“[T]here is no constitutional right to a jury chosen from the division where the offense was committed or from the entire district which includes that division.”); *United States v. Florence*, 456 F.2d 46, 49-50 (4th Cir. 1972) (holding that a defendant has no constitutional or statutory right to a jury selected from the entire district or from a particular division).

Because the defendant has no right to insist that either the grand or petit jury be drawn from any particular geographic area within the Southern District, she is wrong to assert that her fair cross-section claim must be analyzed against the geographic location in which the offense was committed or the trial is expected to occur. Rather, “[w]here a jury venire is drawn from a properly designated division, we look to *that division* to see whether there has been any unlawful or unconstitutional treatment of minorities.” *Bahna*, 68 F.3d at 24 (emphasis added). Here, consistent with the SDNY Grand Jury Plan, the venire for the grand jury that indicted the defendant was drawn from the voter lists of the following counties: Westchester, Putnam, Rockland, Orange, Sullivan, and Dutchess. That is undoubtedly a “properly designated division” pursuant to the JSSA. As noted, the Southern District is not divided into “divisions” by statute. *See* 28 U.S.C. § 112(b). For purposes of the JSSA, district courts in such undivided districts have the authority to determine “divisions” comprised of “counties, parishes, or similar political subdivisions surrounding the places where court is held.” 28 U.S.C. § 1869(e). Accordingly, while the SDNY Jury Plan neither creates nor ever uses the term “White Plains Division” or “Manhattan Division,” it contemplates Master Jury Wheels drawn from two geographic areas that satisfy the definition of “division” under the JSSA. Thus, in evaluating the defendant’s fair cross-section claim, this Court must “look to *that division*”—the counties from which the White Plains Master Wheel is drawn—“to see whether there has been any unlawful or unconstitutional treatment of minorities.” *Bahna*, 68 F.3d at 24 (emphasis added).

In the face of this authority, the defendant cites only two district court cases for the proposition that “community” for purposes of a fair cross-section claim is “widely understood to mean the district or division where *the trial* will be held.” (Def. Mot. 9 at 5 (emphasis added) (internal quotation marks and citation omitted)). Not only is the authority cited non-binding, but

it is inapposite as well: both cases appear to concern instances in which the grand jury and trial jury sat in the same courthouse, and thus there was no cause to consider whether the same “community” was relevant to separate challenges to the grand and petit juries. See *United States v. Johnson*, 21 F. Supp. 2d 329, 334-35 (S.D.N.Y. 1998); *United States v. Kenny*, 883 F. Supp. 869, 874-75 (E.D.N.Y. 1995). As such, neither case supports the proposition that where a defendant is challenging the selection of the *grand* jury, the relevant “community” is the population of the location in which her *trial* will be held. Such a comparison is unjustified, as *Bahna* makes clear: That case appears to involve conduct that occurred in Brooklyn, appears to have been indicted in Brooklyn, was originally tried in Brooklyn, and was later transferred to Uniondale, where it was tried with a jury drawn from the “Long Island Division.” Yet the Second Circuit rejected the defendant’s claimed entitlement to a jury drawn from Kings, Queens and Richmond counties, or the entire Eastern District, because that argument—like the defendant’s here—was based on a flawed premise.

The defendant’s proposed rule—comparing the composition of the *grand* jury venire to the population of the expected *trial* location—makes little legal or practical sense. Where, as here, the defendant’s challenge is to the indictment, the proceeding for which the defendant is entitled to expect a jury drawn from a fair cross-section of the community is not the trial, but the grand jury proceeding itself. Indeed, that *must* be the case, as it is not yet determined where the trial in this matter will in fact occur. The defendant assumes that her trial will ultimately be held at the Manhattan courthouse. While that is *likely* to be the case, it is not necessarily so. *Bahna* again illustrates the point, as a case originally tried in Brooklyn was reassigned to Uniondale for the retrial “to accommodate trial congestion in the court’s calendar during a period of judicial emergency” *United States v. Soares*, 66 F. Supp. 2d 391, 397 n.2 (E.D.N.Y. 1999). In the

Southern District, cases are commonly transferred from one courthouse to another, including cases that are indicted in White Plains but tried in Manhattan. *See* Section XI.A.1, *supra* (collecting examples). That is entirely consistent not just with the foregoing authority, but also with the Southern District's Local Rules for the Division of Business. *See* SDNY Business Division Rules 18, 19. Criminal cases are also sometimes transferred to other Districts for trial. *See* Fed. R. Crim. P. 21. Under the defendant's approach, it would be impossible for prosecutors to determine *ex ante* that they were seeking an indictment from a grand jury drawn from a representative cross-section of the relevant community, because they would not yet know with certainty in which community the case will be tried.

The defendant's argument therefore boils down to an unfounded complaint that it is "a deviation from the established practice" to seek an indictment in a courthouse other than the one in which the case will likely be tried. (Def. Mot. 9 at 2). This argument is inconsistent with the foregoing law that the defendant has no right to jurors drawn from any particular geographic area within the district. *See also* *Rosencrans v. United States*, 165 U.S. 257, 260-63 (1897) (finding no error in grand jury returning indictment in a division different from the division in which the trial proceeded). It also finds no succor in the SDNY Business Division Rules, which vest no rights in any parties and, in any event, contemplate that judges may reassign cases from one courthouse to another. And it falls exceedingly flat on the facts of this case. The Government did not forum shop to achieve some perceived advantage. Rather, it sought a timely indictment from a grand jury in White Plains because it was the *only* grand jury with a quorum sitting in the Southern District on that date (a relatively rare situation created by an unprecedented public health crisis).

In sum, the decision to indict the defendant in White Plains was entirely proper, and the lack of any constitutional or statutory basis for the defendant's contrary argument is fatal to her fair cross-section claims, as described below.

2. The Defendant's Fair Cross-Section Claim Is Meritless

The defendant's fair cross-section claim is based on the assertion that Black or African-American and Hispanic or Latino individuals are unfairly underrepresented in the relevant jury pool. (Def. Mot. 9 at 5). While these are "distinctive" groups, satisfying *Duren*'s first prong, the defendant's claim fails on each of the other two prongs.

a. The Defendant Has Not Established that Blacks or Hispanics Are Unfairly Represented

The second prong of the *Duren* test requires the Court to determine whether representation of either or both of the "distinctive" groups in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community. *Duren*, 439 U.S. at 364. This requires determining the relevant comparators—*i.e.*, what is the "relevant jury pool" and what is the community "population" against which it is compared—as well as the appropriate method of statistical comparison. *See Rioux*, 97 F.3d at 656.

Here, the defendant contends that the relevant jury pool is the White Plains Qualified Wheel. (Def. Mot. 9 at 5-6). The Government believes that the relevant jury pool is the White Plains *Master* Wheel, but, as set forth below, the defendant's claim fails even using the White Plains Qualified Wheel.

"Neither the Supreme Court nor the Second Circuit has defined the 'relevant jury pool' with any specificity." *United States v. Rioux* 930 F. Supp. 1558, 1565 (D. Conn. 1995). In a detailed survey of the case law, the district court in *Rioux* found that cases have examined different relevant pools, including the master wheel, the qualified wheel over a period of time, the venires

appearing around the time of the defendant's trial, or some combination thereof. *Id.* Ultimately, the district court in *Rioux* found that the teaching of *Duren* and the Second Circuit's subsequent cases is that "the court must assess representativeness in the context of the systematic defect identified by the defendant." *Id.* at 1568. In that case, the claimed defects were in the construction of the qualified wheel and, therefore, the "relevant jury pool" was the "qualified wheel over the life of the wheel." *Id.* at 1575.

Affirming that decision, the Second Circuit did not hold that the qualified wheel is necessarily the "relevant jury pool." Rather, after stating that the relevant jury pool "may be defined by: (1) the master list; (2) the qualified wheel; (3) the venires; or (4) a combination of the three," the Circuit noted that the parties had agreed that the district court properly used the qualified wheel over the life of the wheel as the "relevant jury pool." *Rioux*, 97 F.3d at 657. The court's acceptance of the qualified jury wheel as the "relevant jury pool" for that case—an issue which was not in dispute—does not mean it necessarily must be applied in all cases. *Id.* Indeed, in other cases where the claim of error was *not* focused on the construction of the qualified wheel, different "relevant jury pools" have been used by the Second Circuit. Most notably, in *Biaggi*, the main thrust of the defendant's fair cross-section claim was that reliance on voter registration lists systemically excluded African-Americans and Hispanics from jury service—a claim which is directed at the composition of the master wheel—and the Second Circuit identified the district's *master* wheel as the relevant jury pool. *United States v. Biaggi*, 909 F.2d 662, 677 (2d Cir. 1990).

Here, the defendant claims that "the primary reason" for the alleged underrepresentation is the Government's "choice to pursue an indictment from a grand jury drawn from the White Plains Division, as opposed to the Manhattan Division" (Def. Mot. 9 at 7). Even if this argument described a function of the jury selection process – though it does not – it would be directed at the

how the particular *Master* Wheel is selected. It says nothing about the process by which a Master Wheel is reduced to the subset of qualified jurors contained in the Qualified Wheel. Because the “systematic defect” alleged by the defendant relates to the Master Jury Wheel, the White Plains Master Jury Wheel is the appropriate “relevant jury pool.” *Rioux*, 930 F. Supp. at 1566-68.

Although the Master Jury Wheel does not include reliable information regarding the race and ethnicity of the individuals selected from voter registration lists, the racial and ethnic makeup of the White Plains Master Jury Wheel can be estimated using geocoding and Bayesian Improved Surname Geocoding (“BISG”).⁶⁹ Taking into account those estimates, the White Plains Master Wheel is 11.20% Black or African-American and 12.97% Hispanic or Latino. (Siskin Aff. at ¶ 28). By contrast, the White Plains Qualified Wheel is 8.76% Black or African-American and 10.48% Hispanic or Latino. (*Id.* at ¶ 17).

The community population for purposes of assessing representativeness is the population eligible for jury service in the community. *See, e.g., Taylor v. Louisiana*, 419 U.S. 522, 524 (1975) (focusing on population eligible for jury service); *Rioux*, 97 F.3d at 657 (“We conclude that the appropriate measure in this case is the eighteen and older subset of the population . . .”). But how should the relevant “community” be defined? The defendant contends that it is the jury eligible population of the “Manhattan Division,” because that is where the offense occurred and where she assumes she will be tried. (Def. Mot. 9 at 6). As set forth above, she is wrong. The relevant

⁶⁹ The defense motion references the expert report of an expert witness named Jeffrey O’Neal Martin (“Martin Aff.”), which was prepared for the defense in *United States v. Balde*, No. 20 Cr. 281 (KPF), where a similar motion is currently pending before Judge Failla. The Government is likewise attaching the expert report of Dr. Bernard R. Siskin, which was prepared for the Government in *Balde*. As detailed Dr. Skiskin’s report, geocoding is based on estimating the proportion of persons who are of a given race or ethnicity based on the racial and ethnic area in which they live. (*See* Affidavit of Dr. Bernard R. Siskin (“Siskin Aff.”), attached hereto as Exhibit 12, at ¶ 26). BISG enhances the accuracy of geocoding for Hispanic or Latino persons by using information about persons’ last names. (*Id.*).

comparator is the jury eligible population of the five counties from which the White Plains Master Wheel is drawn.

The American Community Survey (“ACS”) 2018 data indicate that the jury eligible population for the White Plains counties in 2018 was 12.45% Black or African-American and 14.12% Hispanic or Latino.⁷⁰ (See Siskin Aff. at ¶ 19; see also Martin Aff. at ¶ 21).

Once the relevant comparators are defined, an additional threshold question is the statistical method by which to compare them. Courts have applied different approaches over time, such as the statistical decision theory, the comparative disparity theory, and the absolute disparity theory. See *Rioux*, 97 F.3d at 655. Although no method is perfect, see *Berghuis v. Smith*, 559 U.S. 314, 329 (2010), the Second Circuit has made clear that the comparative disparity theory is disfavored and strongly suggested that the absolute disparity theory is generally appropriate, see *Rioux*, 97 F.3d at 655-56; see also *United States v. Barnes*, 520 F. Supp. 2d 510, 514 (S.D.N.Y. 2007) (“[T]he absolute disparity approach is the primary approach used in this Circuit.”).

The “absolute disparity” approach measures the absolute numerical difference between the distinctive group’s representation in the community population and the group’s representation in the relevant jury pool. See *Rioux*, 97 F.3d at 655; *United States v. Barlow*, 732 F. Supp. 2d 1, 30-31 (E.D.N.Y. 2010), *aff’d* 479 F. App’x 372, 373 (2d Cir. 2012). For example, if Blacks represented 10% of the community population but only 2% of the relevant jury pool, the “absolute disparity” would be 8%.

There is no specific numerical threshold that constitutes unacceptable disparity under the “absolute disparity” method. “[P]erfectly proportional representation is not required, since no

⁷⁰ The American Community Survey gathers demographic information in between the decennial census, and is published by the United States Census Bureau. (See Siskin Aff. at ¶ 18). The latest available data is the 2018 five-year survey combining the 2014, 2015, 2016, 2017, and 2018 survey data. (*Id.*).

source list will be an exact statistical mirror of the community.” *United States v. Guzman*, 337 F. Supp. 140, 143 (S.D.N.Y. 1972); *see also Taylor*, 419 U.S. at 538. The mere fact that a jury selection system is imperfect does not make it invalid. *Swain v. Alabama*, 380 U.S. 202, 209 (1965) (overruled on other grounds). Accordingly, the Second Circuit has found that absolute disparities as high as nearly 5% fail to establish a *prima facie* case of underrepresentation. *See, e.g., Biaggi*, 909 F.2d at 677-78 (3.6% for Blacks and 4.7% for Hispanics); *United States v. Ramnath*, 131 F.3d 132, 132 (2d Cir. 1997) (3.45% for African-Americans and 4.87% for Hispanics); *see also Barlow*, 732 F. Supp. 2d at 34-35 (collecting out-of-circuit cases rejecting claims presenting similar and even higher disparities).⁷¹

Properly calculated, the “absolute disparity” in this case falls comfortably within the range deemed acceptable by the Second Circuit and other courts. As noted, the “relevant jury pool” is the White Plains Master Wheel, which is comprised of 11.20% Black or African-American persons and 12.97% Latino or Hispanic persons. (Siskin Aff. at ¶ 28). The “community population” is the jury eligible population for the five counties from which the White Plains Master Wheel is drawn, which was comprised of 12.45% Black or African-American persons and 14.12% Hispanic or Latino persons in 2018. (*Id.* at ¶ 19). This yields an “absolute disparity” of 1.25% for Black or African-American persons and 1.15% for Latino or Hispanic persons. (*Id.* at ¶ 28). That disparity does not rise to the level of satisfying the second prong of the *Duren* test.

⁷¹ In *United States v. Jackman*, the Second Circuit held that an absolute disparity of 2.5% for Black or African-American persons and 3.4% for Hispanic or Latino persons was sufficient to satisfy the second prong of the *Duren* test. 46 F.3d 1240 (2d Cir. 1995). The unique facts of *Jackman* make it readily distinguishable. The jury clerk in *Jackman* relied on a qualified jury wheel that was mostly drawn from a master jury wheel that *completely* excluded potential jurors from two cities in the Division—cities that accounted for 62.93% of the voting-age Black population and 68.09% of the voting-age Hispanic population in the division. *See id.* at 1242-44. This resulted in a venire comprised of no Black or African-American persons and one Hispanic or Latino person. *Id.* at 1244. *See also id.* at 1252 (Walker, J., dissenting) (stating that the majority’s decision was “at odds with every decision in every circuit applying the *Duren* test”).

The result is the same even if the defendant's preferred relevant jury pool is used. The White Plains Qualified Wheel is comprised of 8.76% Black or African-American persons and 10.48% Latino or Hispanic persons. (*Id.* at ¶ 17; *see also* Martin Aff. at ¶ 55). This results in absolute disparities of 3.69% and 3.64%, respectively. These figures are also comfortably within the range that the Second Circuit has determined does not satisfy the second prong of the *Duren* test. Moreover, as discussed below, the factors that cause the disparity between the White Plains Qualified Wheel and the White Plains Master Jury Wheel, as well as the voting age population, are not the result of systematic exclusion.

It is only by employing an apples-and-oranges method of comparing the White Plains Qualified Wheel to the jury eligible populations of the “Manhattan Division” or the entire Southern District that the defendant is able to identify disparities that might arguably satisfy the second prong of *Duren*. Because that method has no basis in the law, the defendant's claim fails at the second prong.

b. Any Potential Underrepresentation Is Not Due to Systematic Exclusion

Even assuming the defendant had satisfied the second prong of the *Duren* test—which she has not—she most certainly has not demonstrated that any underrepresentation is “due to *systematic exclusion of the group in the jury-selection process.*” *Rioux*, 97 F.3d at 654 (emphasis added). That is, she cannot establish that the exclusion is the product of “the system of jury selection itself, *rather than external forces.*” *Id.* at 658 (emphasis added). She therefore cannot satisfy the third prong of *Duren*.

As then-District Judge Bianco explained, “systematic exclusion does not occur simply because a facially neutral disqualification criterion disproportionately impacts a particular group.” *Barlow*, 732 F. Supp. 2d at 40; *see also United States v. Barlow*, 479 F. App'x 372, 373 (2d Cir.

2012) (affirming Judge Bianco’s “thorough and well-reasoned” opinion). Indeed, “[a] selection process that is facially neutral is unlikely to demonstrate systematic exclusion.” *United States v. Savage*, 970 F.3d 217, 259 (3d Cir. 2020) (brackets in original) (quoting *Howell v. Superintendent Rockview SCI*, 939 F.3d 260, 269 (2d Cir. 2019)). Moreover, a defendant cannot “make out a prima facie case merely by pointing to a host of factors that, individually or in combination, *might* contribute to a group’s underrepresentation.” *Berghuis*, 559 U.S. at 332 (emphasis in original).

Insofar as the underrepresentation here is measured by a comparison of the White Plains Qualified Wheel to the jury eligible population of the “Manhattan Division” or entire Southern District, the defendant’s argument rests entirely on the prosecution’s decision to pursue an indictment in White Plains rather than Manhattan. (Def. Mot. 9 at 7). That decision was entirely proper, as set forth above. *See* Section XI.C.1, *supra*. And even if it were the case that this decision resulted in substantial underrepresentation, it nevertheless does not amount to “systematic exclusion . . . in the jury-selection process.” The prosecution’s decision as to where to seek an indictment was based entirely on the availability of grand juries during a pandemic, which has nothing to do with the process by which the grand jury is selected. The defendant points to no other source of any supposed systemic exclusion of any identified group. Accordingly, the defendant’s claim also fails at the third prong of *Duren*.

CONCLUSION

For the foregoing reasons, the Court should deny all twelve of the defendant's pre-trial motions.

Dated: New York, New York
February 26, 2021

Respectfully submitted,

AUDREY STRAUSS
United States Attorney

By: /s _____
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
Assistant United States Attorneys
(212) 637-2225

Epstein Update**From****To****Date**

2019/07/29 10:02

Subject:

Epstein Update

Attachments:

TEXT.htm

Good morning: Same presentation today, but he said he thinks his memory for the incident (injury to his neck) may be impaired because of his sleep apnea. He is supposed to get his CPAP machine today. He is aware he will be returning to SHU, but said he is feeling unwell due to his inability to sleep and numbness in his arm. He requested to have one good night of sleep with his CPAP and will return to SHU with a cellmate tomorrow. He then asked if he could remain down here where it is "safe" for the entire week. I told him he can stay down one more night to receive his CPAP and a good night's sleep, but that he would be returned to SHU tomorrow. It was explained that there is no mental health issues precluding him from returning to SHU tomorrow and that we could not house him in the SW/Hospital area because he felt safe or more comfortable for him. It was explained to him that he would be placed in a safe situation in the SHU. He will remain on psychological observation today and will transition to the SHU tomorrow. Thank you, [REDACTED]

[REDACTED] Psy.D.

Chief Psychologist

U.S. Department of Justice/

Federal Bureau of Prisons

Metropolitan Correctional Center

150 Park Row

New York, New York 10007

Office: [REDACTED]

Fax: [REDACTED]

E-mail: [REDACTED]

>>> [REDACTED] 7/28/2019 7:49 AM >>>

Inmate Epstein seems psychologically stable.

He complained that his right arm was numb and hanging earlier. Nurse [REDACTED] saw him.

He again said his right arm still feels somewhat numb and he said he cannot make a fist with that hand. He also said he has numbness on his neck. I informed Nurse [REDACTED].

He stated the toilet in his cell was running for 45 minutes last night and he could not take the noise. He is going to try the toilet before going to legal today and if it does not shut off, he will be moved to another cell.

Thanks,

[REDACTED]

>>> [REDACTED] 7/28/2019 7:36 AM >>>

Inmate Lopez #20472-038 is being taken off of Psych Observation.

Suicide Watch

None

Psych Observation

1. Epstein #76318-054

Pending Bedspace for SHU

1, Lopez #20472-038

Thank you,

[REDACTED]

From: "[REDACTED]" >
To: "srichmanlaw@msn.com" <[REDACTED]>
Cc: "[REDACTED]" >
Subject: Re: Mark Epstein
Date: Mon, 28 Oct 2019 19:12:27 +0000

Hi Stacey,

Are you en route? Thanks.

On Oct 24, 2019, at 10:55 AM, [REDACTED] > wrote:

[REDACTED]

We are confirmed for a meeting at 3:00 p.m. on Monday at [REDACTED]. See you then. Thanks.

[REDACTED]
Assistant United States Attorney
Southern District of New York
Tel: [REDACTED]

From: [REDACTED] >
To: " [REDACTED] >
Cc: " [REDACTED] >
Subject: Re: Mark Epstein
Date: Mon, 28 Oct 2019 22:19:07 +0000

What will? My client is flying in from Florida based on our original conversation. From our discussion you said 10/31 and I called him immediately.

Sent from my iPhone

On Oct 28, 2019, at 6:02 PM, [REDACTED] > wrote:

No, that won't work for us unfortunately.

From: [REDACTED] >
Sent: Monday, October 28, 2019 6:00 PM
To: [REDACTED] >
Cc: [REDACTED] >
Subject: Re: Mark Epstein

I am sorry I would not have confirmed for today. I had a 4 pm doctors appointment scheduled for months. I had told mark 10/31 as well. My apologies. Can we still do 10/31?

Sent from my iPhone

On Oct 28, 2019, at 5:51 PM, [REDACTED] > wrote:

Hi [REDACTED]

Per my email on October 24 below, we were confirmed for Monday (which was today, October 28).

From: [REDACTED] >
Sent: Monday, October 28, 2019 5:27 PM
To: [REDACTED] >
Cc: [REDACTED] >
Subject: Re: Mark Epstein

Greetings. We are set for 10/31 at three per your direction. Did I miss an update?

Sent from my iPhone

On Oct 28, 2019, at 3:12 PM, [REDACTED] > wrote:

Hi [REDACTED],

Are you en route? Thanks.

On Oct 24, 2019, at 10:55 AM, [REDACTED] > wrote:

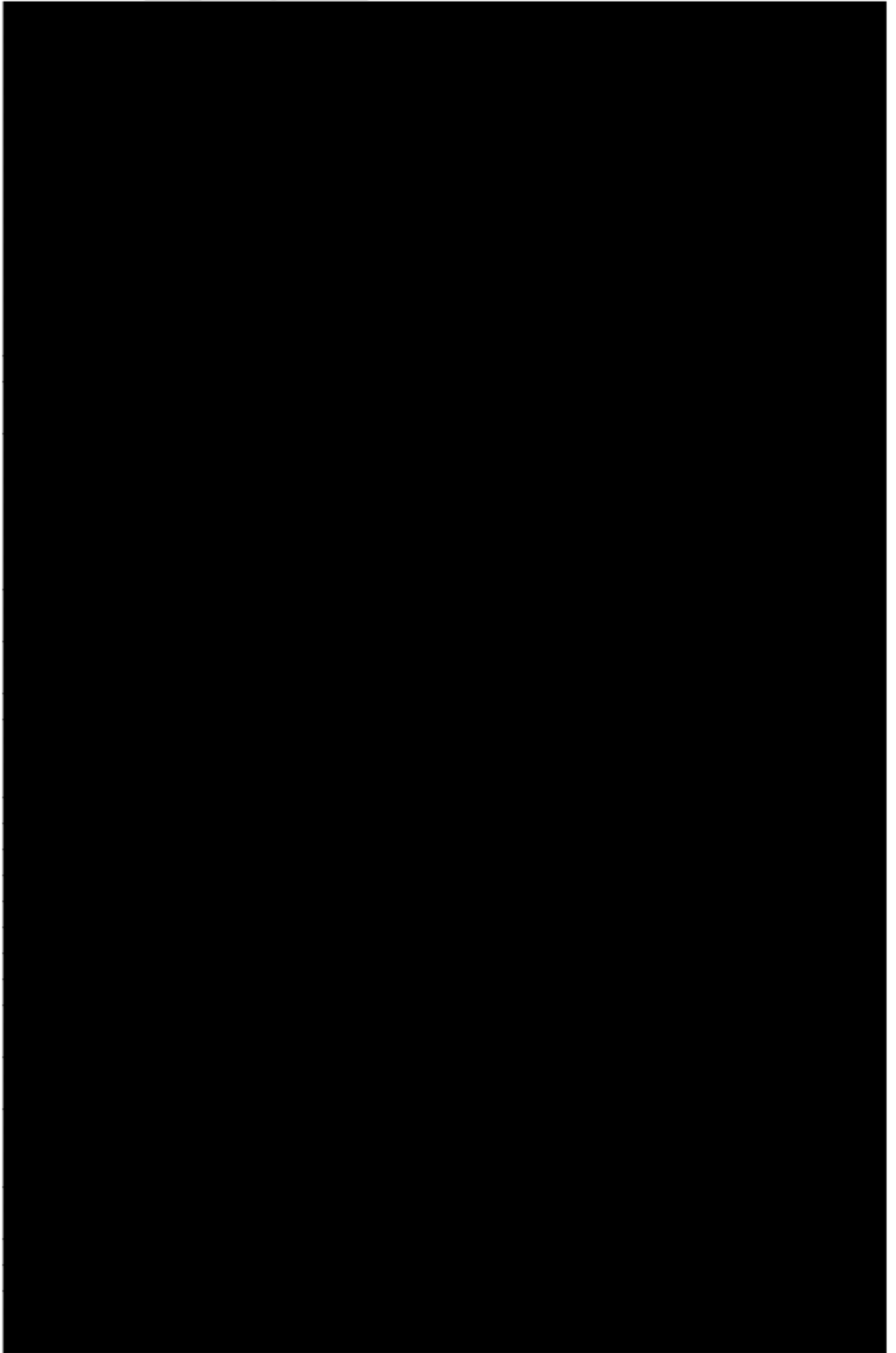
[REDACTED],

We are confirmed for a meeting at 3:00 p.m. on Monday at [REDACTED]. See you then. Thanks.

[REDACTED]
Assistant United States Attorney
Southern District of New York
Tel: [REDACTED]

From: Chris Dilorio <[REDACTED]>

To:



Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

Date: Fri, 21 May 2021 03:14:00 +0000

Attachments: KCG_Appendix_3-20_13_penultimate.docx; KCG_TCR_3-20-13-penultimate_draft.pdf; KCG_TCR_3-20-13-penultimate_draft.docx; KCG_Appendix_3-20_13_penultimate.pdf; kcg1.pdf; kcg2.pdf; kcg3.pdf; kcg4.pdf

Judge Swain: as you know: as simple as mismarking tickets. AND FREE.

[BTIG, LLC \(Release No. LR-25092; May 20, 2021\) \(sec.gov\)](#)

As I have made the SEC aware for quite some time: the KCG attachments 1-4 show KCG was naked shorting in the months leading up to the Clayton/Sull Crom/Fishman et al fraud Virtu acquisition of KCG in July 2017. IRREFUTABLE. KCG traded more volume than the overall market. It's right there. The SEC has had this information and my TCR's ALSO for quite some time. Nothing out of SEC NY: Best,Mehrban et al. Further: In June 2017, just weeks before the fraud Virtu/KCG transaction closed where Virtu CEO Cifu won't disclose KCG 2Q2017 financials, FINRA not the SEC brought a complaint against VIRT for "mis marking" 1.6 MILLION short sales as long. Each, a Reg Sho violation similar to the SEC/BTIG complaint filed just today.

[Public Document \(finra.org\)](#)

Yet, no mention of Reg Sho. HOW???

Because KCG was insolvent AGAIN. Rather than another "glitch", Clayton, Handler,Goldman,JPM et al orchestrated the Virtu/KCG transaction. Cifu wrote down more than \$4 BILLION in open naked short fails that no longer traded: MY TCR.

Not the first time the SEC criminally and corruptly obstructed an investigation into my allegations. My NITE/UBS TCR filed in March 2013. The SEC et al orchestrated "glitch" and reverse merger between Knight and Getco didn't close until July 2013. There wasn't going to be an investigation then like there was no investigation in 2017.

Cifu, with the blessing of the SEC engaged in a massive accounting fraud in not "disclosing" KCG 2Q2017 financials. Material to ANY investor analyzing the transaction.

Now, today: May 20 2021 the grossly corrupt SEC brings a Reg Sho complaint against BTIG for doing EXACTLY what Virtu did. Yet, still nothing from the SEC.

SEC et al orchestrated "trading glitches" automatically put you on the "Do Not investigate list"

Hey, is Trump PA campaign Mgr David Urban still on the NITE Bod?

So, once again the SEC "Do not investigate list" on display in the SDNY Courts

Cheers!

Chris

From: Chris Dilorio <[REDACTED]>

Sent: Tuesday, September 8, 2020 3:56 PM

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

Judge Cave, Judge Jones

please see the new attachments: KCG1-4

This is irrefutable proof that the Handler/Jefferies bailed out criminal entity: NITE was engaged in abusive naked shorting in the months leading up to the SEC/Jefferies/Handler/Cifu et al VIRT/KCG merger closing on 7/31/2017.

These were KCG released pr's stating KCG traded more volume than the overall market in 4 separate months leading up to the merger. Further proof that the SEC/Jefferies/Handler/Cifu et al KNEW exactly the illegal activity taking place at NITE. This on the heels of the SEC/Jefferies/Handler et al "glitch" and bailout. These naked short fails were on the KCG balance sheet right before the VIRT acquisition took place. Per my TCR: these fraud "assets" were sitting on the KCG balance sheet WHEN VIRT and KCG issued PR's detailing the tangible book value calculation used in the acquisition. Then, immediately prior to the deal closing Cifu wrote down BILLIONS in fraud "assets". "assets" used in the tangible book value calculation. Who benefitted from this grossly inflated/fraud tangible book value calculation? Handler/Jefferies among the top beneficiaries.

Judges Cave and Jones,

I have ZERO financial interest in helping Mr Kamensky. I repeat: ZERO. The overwhelming evidence I have provided your respective courts PROVES a corrupt/criminal relationship between the SEC (and DoJ) and Handler/Jefferies. The sting that caught Mr Kamensky must be put in proper context. Mr Kamensky's due process DEMANDS it. Justice DEMANDS it.

As a result of the SEC/Handler/Jefferies corrupt/criminal relationship the public remains at great risk. This massive and ongoing fraud MUST end.

Almost immediately after I sent these attachments to the SEC in their original form, they were taken down. Again, these pr's were put out by KCG. Meaning someone at the SEC alerted KCG that these PR's were out there still.

Regards,

Christopher J Dilorio

Whistleblower
[REDACTED]

From: Chris Dilorio <[REDACTED]>

Sent: Saturday, September 5, 2020 7:08 AM

[REDACTED]
[REDACTED] <[REDACTED]>
Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

Ms [REDACTED], Mr [REDACTED] et al,

Your prosecution of Mr Kamensky while obstructing an investigation of Little Dick Handler/JEF et al in the massive and very much ongoing SEC facilitated criminal activity with regards to Knight/KCG/VIRT:NITE and the primary role of Little Dick Handler/JEF is itself criminal obstruction. In fact, the grossly corrupt SEC et al have been in possession of this exculpatory evidence in my claims since 2013. The courts will see this exculpatory evidence. Proceeding with your prosecution of Mr Kamensky is a KNOWN fraud on the courts. Exposing the irrefutable evidence in my claims :the record Janey: brings down some very powerful people. INCLUDING people at the SEC. In short, the SEC criminally obstructed an investigation of my claims into the criminal activity of Little Dick Handler/JEF for 7 years now. Mr Handler/ JEF should have been prosecuted by the same entities now prosecuting Mr Kamensky LONG ago.

Cheers!

Christopher J Dilorio

Whistleblower
[REDACTED]
[REDACTED]

From: Chris Dilorio <[REDACTED]>

Sent: Tuesday, June 23, 2020 9:48 AM

[REDACTED]
Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

Ms Norberg,

I am in receipt of the SEC OWB correspondence allowing me more time to respond to the preliminary denial of my award application for the Oppenheimer 2015 covered action. This e mail was the last 1 I sent to your office related to my appeal. It will serve as the basis of my appeal. Including the attachments of my 2013 TCR submitted with [REDACTED] Montague to the SEC. I will also forward correspondence from 2012 and following detailing my extensive correspondence with Robin Traxler at FINRA as well as Sean McKessy in the OWB. Even though, I have previously forwarded your office as well as the SEC IG office the exact same corroborating

evidence. My response to you will be lengthy and detailed. However, given that it took your office FIVE YEARS to send me a preliminary denial notice, that is understandable and in fact a result of YOUR lengthy delay in notifying me. ALL of my response pertains to the denial appeal at hand.

In 2011, I filed my first Whistleblower complaint with the SEC. Detailing a massive fraud on the public directly implicating dozens of entities. The center of my claims: Knight/KCG/VIRT: collectively NITE and the Swiss banking giant UBS:UBSS. By far, NITE was and still is today the largest MM/executing BD in the OTCM space. I was shocked to find the Swiss banking Giant UBSS was trading many of the same stocks as NITE and to the extent they were. This came on the heels of the FINRA UBSS Reg SHO complaint where the extent of the UBSS activity "threatened to undermine the integrity of our markets" while the SEC analysis of this activity was simply a case of "sloppy record keeping". My experience as an Institutional Sales trader: executing multi million share equity trades for the largest institutions in the world like Fidelity and Putnam. In addition, as a Research Sales person: analyzing financial statements and making investment recommendations formed the basis of my expertise. In fact, the SEC OWB has paid out awards for information just like mine. In August of 2011, I informed the SEC that NITE was insolvent having reported just \$105 mil in working capital at June 30, 2011. AND, for the reasons cited in my TCR detailing massive accounting fraud as a direct result of illegal naked shorting/self clearing/reverse splits/cusip changes etc. The SEC had a choice: investigate these extremely serious allegations and shut down this massive fraud on the public OR cover up their failure and allow this massive fraud on the public to continue. Unfortunately for the American public the SEC is mandated to protect, the SEC chose the latter. As a direct result, ALL of the activity detailed by me in this TCR and other TCR's filed with the SEC as well as 9 years of additional correspondence with the SEC, this is very much an ongoing, massive scheme. One that the SEC actively facilitates. Countless losses have been incurred as a result. NITE as I detailed is in a constant state of insolvency. The SEC has time and again intentionally misled the investing public that there is no abusive naked shorting. NITE is still in business TODAY.

The core business at NITE is and always has been: abusive naked shorting OTCM shells to facilitate money laundering. Not DMM, FCM, reverse mortgages, or even HFT. This illegal business is EXTREMELY profitable and virtually riskless. AND, both the SEC and FINRA know this. In 2016, FINRA brought a Rule 204 complaint against NITE. The fine was pathetic and not meant to be a deterrent. This is WHY the OTCM exists. But it's not JUST OTCM as my AQR TCR filed with the SEC clearly proves: NASDAQ Blank check shells as well. I have also filed separate TCR's related to NewLead and FreeSeas: 2 massive money laundering shells which began on NASDAQ, de listed to the OTCM. NONE of the activity detailed in the Opco/Gibraltar complaint takes place without a willing executing BD/MM who ultimately turns worthless certs into real money. That #1 trader is NITE. As you read in my Knight TCR CGFIA is at the heart and, because it was based in Colorado, became a template of sorts for my extensive research. See Ms Norberg, unlike the SEC "investigators" on the Opco/Gibraltar complaint, I've actually seen first hand the CGFIA "world HQ" as well as the rented Littleton home of CGFIA CEO Guyer. I've done extensive research on Properties claimed to be owned and M&A transactions done for the sole purpose of cert printing and distribution (Aurelio AMNP) where the ultimate acquisition amounted to a distributor of Ukrainian folk music. I've also done extensive research on domestic and foreign financial institutions claiming to "invest" in these scam companies like Josh Sason/Hanover/Magna also cited in my 2013 [REDACTED]/Knight TCR linked. So, as I detailed to Ms Traxler, I followed Guyer to Neuchatel Switzerland and his previous endeavor: Antelope Technologies also with an office in Highlands Ranch CO. Where I discovered a connection to Swiss/German individuals/entities that were also related to another OTCM shell in the OpCo/Gibraltar complaint as well as my Knight TCR: AppTech. Offices in the Woodlands TX and Boca Raton. AND very much up and running today. SHOCKING. The SEC OpCo/Gibraltar complaint is based on the FINRA complaint. That is absolutely irrefutable. As the Gibraltar complaint alleges just 1 OTCM shell and just a million shares while Commissioners Stein and Aguilar referenced BILLIONS of shares in their OpCo waiver dissent. Who executed those BILLIONS of shares? Was OpCo even a MM? If I ask a question it's typically a rhetorical: I know the answer. The SEC knows the answer also. The SEC OpCo complaint does not mention the executing BD/MM. The SEC complaint doesn't mention Sason/Hanover/Magna either. The SEC complaint makes no mention of illegal naked shorting which is clearly evident in the CGFIA 10Q referenced below. THIS IS MY

INFORMATION. So, why aren't NITE, Hanover/Magna and UBSS implicated in the SEC OpCo/Gibraltar complaint? What my TCR clearly and irrefutably proves: NITE was engaged in illegal activity both BEFORE and AFTER the SEC et al orchestrated August 1 2012 "trading glitch". So, the SEC bailed out a KNOWN criminal entity. Unfortunately for the investing public, the SEC has doubled down on facilitating this illegal activity into 2020. The "glitch". Knight was insolvent in August 2011. I told the SEC this. The "glitch" proved my allegations. Key point in my TCR: NITE inadvertently sent 4000 worthless securities to JPM to secure an emergency bridge financing as collateral. These were open, naked short fails that could not be covered/closed due to a cusip change (SEC/FINRA approved rev split) booked as an "asset"(receivable) due to self clearing: MASSIVE accounting fraud. Ironically, the "glitch" proved my allegations: despite claiming to have a "highly liquid balance sheet" NITE had to raise the entire amount of the "glitch". AND the ultimate "financing" was not collateral based. Rather a 50% discounted convert when the stock had already been crushed to \$3 OR \$1.50. ALL of the financing participants knew the NITE balance sheet was complete fraud. NITE also committed securities fraud in pledging those 4000 worthless securities as collateral to JPM: SCOTUS Rubin: pledging collateral to secure financing is an offer to sell. JPM looked the other way. As did the SEC.

Further, I submitted my amended TCR with [REDACTED] in March 2013, In August of 2013, FINRA brought a penny stock AML complaint against OpCo. Sale of unregistered penny stocks. WHO ultimately executed the trades? 2008-2010. In July 2013, the "glitch" financing Gen Atlantic/Getco reverse merger with Knight to form KCG closed. The new CEO of KCG was Dan Coleman who ran Equities at UBSS during their Reg Sho and cross border activity. For UBSS, the DOJ (Acosta Downing et al) dropped their DPA in 2010. My claims: the FINRA OpCo/Gibraltar complaint clearly implicates UBSS criminal activity AFTER the DoJ dropped its UBSS x border DPA. This is what the SEC is protecting in the OpCo/Gibraltar complaint: NITE/UBSS/Hanover/Magna illegal activity.

Also in my Knight/[REDACTED] 2013 TCR: IMDS. A multi year money laundering shell kept up and running by the SEC. Also NITE,UBSS, and Hanover Magna. In addition to other entities like JMJ, Southridge, and Alpha Capital Anstalt. Alpha Capital Anstalt is very much in business today as a result of SEC obstruction while the SEC recently brought a complaint against JMJ for activity like that in IMDS even AFTER he was barred by FINRA. In IMDS, the SEC allowed 2 barred individuals (CEO/CFO) to do an offering that created 37 BILLION shares of IMDS at .0001 with Chinese Nationals before revoking the IMDS registration. What do you do with 37 billion shares of IMDS at .0001 when there are no bids below that? NOTHING. The stock never traded. The SEC orchestrated a NITE/UBSS/Hanover/Magna/JMJ/Alpha etc MASSIVE naked shorting to facilitate money laundering scheme bailout so that the MASSIVE naked short position didn't need to be covered in the open market as is mandated by Rule 204. Thus insuring profits and not MASSIVE losses for NITE and UBSS.

I also filed separate TCR's for NewLead and FreeSeas. 2 "Greek shipping" money laundering shells started on NASDAQ and delisted to OTCM. NITE top trader in BOTH. Hanover/Magna in both. I contacted the KY Div of Mines and notified the SEC that these "transactions" were complete fraud. The SEC Feb 2019 complaint against Hanover/Magna is my information: Bogus obligations, assigned, converted to worthless certs. Then dumped on the public and converted to REAL money by the executing BD/MM:NITE. Who generates illegal trading profits by abusive naked shorting. Very symbiotic relationship. 1 of the Hanover/Magna entities was Gibraltar/Hanover. Somehow omitted from the SEC OpCo/Gibraltar complaint. In NewLead, then SEC White and Ceresney firm Debevoise did a "fairness opinion" of a Russian Nickel wire transaction where the NewLead CEO had back dated documents. That has been expunged from SEC reviewed filings. FreeSeas: a structured tax evasion/money laundering shell. Also involved Credit Suisse and Deutsche Bank. Both Debevoise clients. Both involved in the tens of billions Russian Mirror trade scheme. In addition to Hanover/Magna a Milken related entity Crede: Run by Milken/Drexel/Obstruction of justice/Parking: Terren Peizer and his felon partner Michael Wachs. This led me to Net Element NETE. Peizer again. This time with more AML red flags than be counted. Well known to the SEC through TWO of my separate TCR's. CEO is Oleg Firer. Firer former money laundering shell Acies shut down by the SEC while NETE was left up and running. Acies very much up and running also in MA. In NETE: NASDAQ. AQR Blank check shell. SEC allowed 2 offerings so that NETE could keep its NASDAQ listing. 1 was with entity Esousa: felon Wachs ex wife. 2nd was with Cobblestone: felon Wachs sister. I told the SEC. They still approved

the offerings. I discovered AQR money laundering blank check shell activity doing research on NITE and Hanover/Magna. A top traded NITE OTCM shell was Cereplast. Another AQR blank check shell. Hanover/Magna/NITE/ and Alpha Capital Anstalt. Alpha is Liechtenstein based and controlled by Martin Schlaff: Austria/Israel. Also IMDS (w/Schlaff controlled Balmore) and the Frost/Honing/Stetson et al complaint. Schlaff also LH Financial/Wolfson/Sulphco and Bawag: Sedona/Scan Graphics: Refco: Naked shorting. NITE is Refco on steroids. Cereplast ended in bankruptcy.

NETE claims to be a "payment processor". BILLIONS in transactions processed. Never break even let alone profitable. Balance sheet complete fraud. AML red Flags: Firer is Grenada Amb to Russia living in Miami, Apockinas/Grinshpun/Antonov/Rakishev/Trump/Kushner/SBNY/CardWorks/Merrick Bank/ESQ/Cohen etc etc etc money laundering/transaction laundering BILLIONS shell. Kept up and running for years since filing my NETE/AQR SEC TCR's. ALL of my allegations proved accurate in 2020 when NETE received Cares Act taxpayer money then announcing it was "unlocking the value in its misunderstood payment processing business" by doing a reverse merger with a CA electric car company started by a former musician. The payment processing business to be "sold" and the new company (Mullen) will own 80-90%. All made possible by SEC obstruction and ACTIVELY facilitating illegal activity. Another AQR blank check shell is Astra/Phunware. More Greek shippers related to massive swindler Economou originally intended to do an "energy logistics company" acquisition and somehow settled on "mobile app developer" Austin TX: Phunware. PHUN CEO is well known to the SEC with shells going back 15 years. I alerted the DoJ and SEC that PHUN was a money laundering shell. In addition to the "genius quant" AQR, AIPAC: Gerber/Hudson Bay, Nordlicht: Ari Glass/Boothbay, 1MDB: Khazanah Nasional, Global Crown/Rani Jarkas/EFG/BSI/Optima/Max Fang. AG Barr 1MDB waivers: Kirkland also AQR. Broidy: Trump: 1MDB money laundering. PHUN also received Cares Act money. AND PHUN is Trump/Kushner/Parscale campaign mobile App. PHUN should have also been shut down long ago. AQR too. OTHER AQR blank check shells: CIS/Delta/Urban Tea, Ability/Cambridge, Hunter Maritime, and MI Acquisition/Priority Tech Holdings. Ability/Cambridge: Israeli cellular intercept/surveillance. Israel sent employees to jail. In the US it was "securities fraud". The SEC Ability/Cambridge complaint was handled by Ansu Banerjee in the SECLA office. Milken/Mogilevich/BoNY money laundering entity Sinex: Debasish Banerjee. WHY did SECLA have jurisdiction over ABILF/Cambridge? Result: ABILF is very much up and running today. I believe this is the PHUN/Trump/Kushner/Parscale mobile app technology.

Hunter Maritime:HUNTF: Never consummated an acquisition. Just cert printing/dumping. Also involved: Milken family office: Silver Rock. MI/Priority:PRTH. CEO Tom Priore: well known fraudster to the SEC. Also transaction/money laundering like NETE. Also involved: Hanover/Magna.

ALL AQR money laundering shells up and running today thanks to the SEC. Only recently did the SEC revoke CGFIA and NewLead. well after going dark and the massive fraud on the public had already been perpetrated. In NewLead, FreeSeas, etc etc etc a common tool used is reverse splits to perpetuate and facilitate illegal activity. SEC/FINRA approved. The result is the massive accounting fraud at NITE. WHEN not IF there is an open naked short fail when a rev split takes place, a new CUSIP/security is issued. Trades in the old cusip/security cease. This creates a structural liability. The fail/short can NOT be closed. Like covering a short in AAPL with MSFT. Because NITE is self clearing it books a prop naked short as a receivable. An asset. But, because NITE won't or CAN'T deliver, massive accounting fraud. Literally a liability booked as an asset. This is how "glitches" are born. But the SEC facilitated fraud doesn't end there. The definition of a failed trade: 1 that hasn't settled. The SEC/DTCC issue new securities where trades in the old haven't settled yet AND not authorized by the issuer. Settlement: buyer brings cash/seller brings securities. The DTCC simply makes journal entries. But there are still "IOU's" in the system. The SEC authorized the DTCC to create a shadow clear,non guaranteed, ILLEGAL (clearly contrary to 34' Act "prompt and accurate settlement) Obligation Warehouse so criminals like NITE et al can circumvent close out REQUIREMENTS of Rule 204. The OW is just what it sounds like. Per my Knight TCR, DTCC suspends services (Chill/Lock) and trades are deemed "ex clearing". In a FOIA request made with POGO, [REDACTED] and I asked the SEC fails data on dozens of NITE/UBSS top traded stocks like CGFIA,APCX and IMDS. The SEC response: see our website. The SEC fails data is for DTCC cleared trades only. The SEC knows exactly the level of fails sitting in the OW. They don't disclose. Intentionally misleading the public there is no naked shorting. In

1Q2020, the receivable at NITE/VIRT increased \$1.2 BILLION sequentially. Up almost 90%. AND the tangible book value is grossly insolvent. When it comes down to it, there really isn't ANYTHING in the receivable that NITE can convert into cash for its own use. There are prior commitments on those "assets": SETTLEMENT of transactions. Because the SEC has never shut down this activity, NITE is in a constant state of insolvency. Other examples of SEC attempts to cover up NITE illegal activity so that it can continue include: Cerberus/Feinberg/VIRT bidding on NITE post "glitch". Wasn't their turn. First, Gen Atlantic needed to monetize its GETCO "investment". The HFT business at GETCO was in a death spiral when the rev merger took place. So what was the attraction to NITE? The business that had absolutely ZERO overlap/synergies: OTCM. As low tech as it gets. Literally a trader sitting in a chair. As I have asked the SEC on hundreds of occasions over the years: what would happen to NITE trading profits if their OTCM share volumes went to ZERO? Cerberus is Feinberg: Gruntal/Milken. Also bailed out Bawag:Refco, HSH, and Deutsche Bank (\$50 bil Bad Bank to Goldman). Another Milken/NITE connection is Rich Handler: Jefferies. Also a Milken/Drexel protege. Milken was Gruntal: Feinberg,SAC,Icahn, Sater etc. Gruntal was "sold" to Ladenburg. Controlled by Vector/NewValley:Icahn/Lorber/Elliman etc. And, was sold to multi billionaire Frost. Who, according to the SEC risked it all trying to "make" a few million when he, Honig, Stetson, Alpha et al were really LAUNDERING. Milken also Whiterock ,D H Blair (Morty Davis) and AR Baron (Bressman/D H Blair) which was the precursor to Bear Stearns collapse . So, Milken and his merry crew of flunkies are really at the nexus of JUNK. They own Trump and his White House (Trump casino junk) and they own the SEC. It was Milken, Leon Black, Handler, Moelis, Virtue: Drexel that caused the S&L taxpayer bailout stuffing them with junk like Trump's. It is no coincidence that these same flunkies are also the largest CLO originators/managers. CLO's: Junk on steroids. AGAIN Bailed out by taxpayers in Cares Act HY. There also connections to Epstein. Treasury Sec Mnuchin and Black: HY/Junk/S&L's and Epstein. Black: Money laundering shell ESWW kept up and running by the SEC was/is an Epstein money laundering vehicle: JUNK IS JUNK.

THIS EXPLAINS the Handler/Jefferies/Milken repeated bailouts of NITE. It also explains the SEC criminal obstruction.

SEC Chair Clayton is also directly linked to this criminal obstruction. His firm Sullivan Cromwell and Jared Fishman are ACTIVELY facilitating this massive fraud on the public. Clayton did not disclose these conflicts in his disclosures. Sull Crom/Fishman have advised Knight/KCG/VIRT and several transactions designed to facilitate this ongoing and ongoing fraud on the public. Many of the same players involved in the "glitch" were involved in the VIRT acquisition of KCG in July 2017. In addition to Sull Crom/Fishman and Handler/Jefferies: JPM and Goldman. The SEC facilitated fraud in the NITE/VIRT transaction is egregious illegal activity. The transaction NEVER should have happened. KCG was an SEC reporting company until the deal closed on July 31 2017. Despite this FACT, VIRT CEO Cifo refused to "publish" KCG 2Q2017 financials. I estimate Cifu/Coleman/Handler/GS/JPM wrote down more than \$4 billion in open naked short fails: "leverage". The SEC let him. Meaning: "assets" used to determine the take out/ tangible book of KCG was complete fraud. VIRT grossly OVER paid for insolvent KCG.

Prior to the NITE/VIRT transaction closing in July 2017, NITE would report its trading stats monthly. Including OTCM share volumes. Cifu stopped this post merger. The SEC let him. In fact, you will find NO reference to NITE/VIRT OTCM share volumes in any SEC reviewed filing, sell side research or investor presentation. A well orchestrated fraud on the public. Omissions to Intentionally mislead the public as to the true representation of the NITE/VIRT business model. These share volumes are also at the center of my 2013 [REDACTED] TCR. There are no affirmative disclosures in any SEC filings to this day as to the AML risks posed in trading these OTCM and other shells. In a 2014 letter to the SEC, I detailed the first 2 months of NITE OTCM share volumes. When the 1Q2014 10Q was filed, these volumes were confirmed: An ASTRONOMICAL increase sequentially as well as year over year. These share volumes/my letter/TCR SHOULD have triggered an immediate SEC investigation. It did not. This portion of the KCG 2Q2014 10Q was expunged as well as 3Q2014 OTCM share volumes. I have detailed this to the SEC/OWB/Enforcement/IG. In the months leading up to the NITE/VIRT closing in July 2017, KCG put out monthly trade stat pr's showing KCG trading more volume than the overall market. Also indicative of naked shorting. Those pr's were also expunged. I also including electronic forms to the SEC OWB/Enforcement/IG.

The SEC has essentially outsourced the ENTIRE OTCM market to the Broker Dealer SRO FINRA. Including: management of the OTCM share volume website fka OtcBB.com. Today, there is very little transparency into trading activity by MM as a result. Also: ISSUER corporate actions: rev splits, Short interest reporting: an absolute farce given there is still no CAT. AND BD compliance with the BSA. Per my TCR: WHY did NITE and UBSS trade Billions of shares of CGFIA and IMDS AFTER a Chill or Lock was placed (ex clear/OW)? CLEAR AML red flags. Because they had an open naked short position. Why not pull a market? Because they had an open naked short position. SAR's? WHEN? BEFORE OR AFTER THEY TRADED BILLIONS OF SHARES? There were no SAR's either. NITE can not outsource its compliance responsibilities to 3rd parties (like OpCo) when executing trades as MM. In 2015 at a SIFMA conference, Ceresney was "shocked" by the number of BD's under his supervision filing 1 or ZERO SAR's. NITE SHOULD have been investigated for egregious BSA violations long ago based on my TCR. Knight/KCG/VIRT:NITE is and always has been a criminal enterprise. Spitzer Russian/US mob bust: "worthless paper". Ashton Tech became VIE became Optimark became Knight/Trimark NITE literally "made by the mob". The SEC has known this for years. ALL of the "worthless paper" shells were SEC reporting companies. Today, Trump PA Campaign Mgr David Urban sits on the NITE BoD. AND is also on the BoD of his very own money laundering shell: Canadian/Pakastani/pot/COVID: FSD Parma: HUGE. Trump advisers/campaign staff Bannon and Parscale also involved in OTCM money laundering shells. Parscale Cloudcommerce fka Roaming Messenger also receiving taxpayer Cares Act money.

Madoff: more money laundering than Ponzi. HOW THE HELL did the SEC let that scam go on for as long as it did? Criminal obstruction. The former SEC IG Kotz actually investigated his "bosses" at the SEC unlike current IG Hoecker. Years of SEC obstruction. Bullshit "investigations" into "running ahead" meant to distract. Similar to the SEC "glitch" "market access complaint" where former SEC "glitch" Enforcement Dir Khuzami/Kirkland(Barr) also rep'd NITE. Can't make this up. The center of IG Kotz scathing failure of the SEC in Madoff: SEC NY and Mr John McCarthy who ended up being Knight/KCG Chief Counsel. As I said: can't make this up. And, as we know Madoff started his career in NASDAQ penny stocks exactly like the 1's in the Spitzer/Mob complaint.

OTCM: This is WHY the OTCM exists: abusive naked shorting publicly traded shells to facilitate money laundering. CEO Cromwell Coulson CHAIRED the FINRA market Regulation Cmte. Say it with me: Can't make this shit up: CMTSU. A founding OTCM Board member is former NITE trader Andrew Wimpfheimer:CMTSU. This is a very well orchestrated and ongoing fraud on the public. Russian mirror trades: no SEC OR DOJ investigation HOW? According to stories: activity peaked in 2H2014. Coinciding with NITE astronomical OTCM 1Q2014 share volume increase. In addition to money laundering penny stock shells, the OTCM is also home to many ADR's. Including Russian ADR's cited in the NYDFS/DBTCA/mirror trade complaint. Little/no disclosures. Also in my TCR: P&D is just a tool used to facilitate the fraud and NOT a stand alone fraud. The SEC intentionally stops short of thorough investigations into much bigger frauds. The same way it has the public believe the "penny stock trading fairies" convert worthless certs to real money. NO! willing executing BD's and MM's like NITE do that. Less than a year after filing my Knight TCR with [REDACTED], FINRA (not the SEC) brought the BBH AML complaint. This was my information. Swiss banks, foreign/domestic institutions, executing BD's/MM's/ penny stock shells: \$850 mil in proceeds. Did BBH implicate NITE and other entities in my claims? WHY are all of the entities in the complaint UN NAMED? In the interest of transparency for the investing public? In 2019, I also filed an award application for the UBS x border/AML complaint. This is BLATANTLY my information. SEC/FINRA/ AND the SEC. I filed an IRS TCR based on my SEC TCR attached. In April 2016, 2 IRS CI Agents: VIKAS Arora and Nathan Sarnacki flew to Denver from Chicago to meet with me. I believe they were blown away. Then came the UBS complaint. As a follow up to our meeting, they wanted to know WHO at the SEC I shared my information with. I told them. That was the last I heard from them although I continued to send them my information.

To the SEC IG Carl Hoecker: In 2015 I parted ways with [REDACTED] as I was convinced the SEC was using my information in an unethical/illegal manner to both bring and obstruct complaints. [REDACTED] was not willing to file an IG complaint. After parting ways, I almost immediately did just that. Prior to retaining [REDACTED] I had filed an award application for the UBS Reg Sho complaint. In my submission and my correspondence with Mckessy/OWB I made the claim based on OWB permissible rules to "open a new line of inquiry". One that would link the trading activity detailed in my ultimate TCR by NITE and UBSS. That link: Abusive naked shorting

publicly traded shells and money laundering. My application was denied and there was no investigation into this link. The SEC had just bailed out a "known criminal enterprise": NITE "glitch" was not a forthcoming admission. Neither was the blatantly and knowingly false pretext for the DOJ dropping its UBSS x border DPA because "UBSS was in full compliance" in 2010. So, rather than open a new line of inquiry, the SEC chose to obstruct.

I made clear to Hoecker the egregious conflicts by Khuzami, White and Ceresney with clients UBS, JPM, CS, and DB. Hoecker claims to have conducted a "thorough" investigation of my very serious allegations and found nothing. Despite MJW waivers received to "investigate" her Swiss bank client CS. Then in 2019, Hoecker arrogantly told me I could file a FOIA request on his findings. Then, came 2019 and absolutely nothing had changed. NITE was still trading billions of shares of OTCM shells like ELTZ. There were still no risk disclosures. Cifu refused to publish KCG 2Q2017 financials, Hanover/Magna/AQR/Alpha/IMDS etc etc etc were still up and running. I filed ANOTHER complaint with IG Hoecker. Despite the fact that Hoecker himself wrote the IG handbook on "thorough investigations" mandating complainant interviews, I have never been interviewed by Hoecker. In addition, the IG Hoecker is mandated to inform Congress as to serious allegations like mine. He did not. In doing so, obstructed Congress from executing its oversight of the SEC/OWB. And despite hundreds of offers to fly to SEC HQ to have the best and brightest at the SEC rip apart my allegations 1 by 1 I have never been taken up on my offer. Why is that? The SEC OWB has gone to great lengths in other cases to explain the OWB process etc to whistleblowers. I have never been told "no thanks" for my information. In fact, McKessy has solicited MORE information from me after submitting my [REDACTED] TCR. In Madoff, an intern could have verified/shut down in weeks NOT years. No contra parties. Only a well orchestrated obstruction by SECNY/McCarthy et al kept it up and running. As I have also repeatedly told the SEC: My claims could be verified in weeks also. NITE has a P&L for every stock they trade. These, aggregated, are basis for quarterly trading profits. These P&L's, combined with OW data, and balance sheet data will validate ALL of my claims. I've offered my service to do exactly that. 2 weeks max. After all, proprietary trading strategies are NOT proprietary if they're illegal. For the reasons I have listed in this summary, NITE/VIRT is on the SEC "do not investigate list". And yes, there most definitely is such a thing. Especially when it comes to illegal activity facilitated by the SEC. So, the SEC denial of my OpCo award claim which was 5 years in the making is just another example of my very serious allegations: The SEC solicits and uses whistleblower information like mine to both bring and obstruct complaints. Unethical. Illegal. To deny my award application because the "investigators" didn't see my information is further affirmation of my allegations. They saw it. They used it. They denied my compensation for it. Again Ms Norberg, I will forward my 2012 etc emails with Robin Traxler at FINRA as well as McKessy as further evidence that my Award application denial should be overturned. Further affirmation from 2 dissenting SEC Commissioners and the judge in the Gibraltar case makes this denial both egregious and bizarre. Bizarre ONLY if you believe that there is no SEC obstruction that is. BTW, crazy stuff going on with the firing of Mr Berman/Clayton nomination to take his place/Rabbitt to DOJ/Carpenito replacing [REDACTED] [REDACTED]/Trump/Barr don't you think? The SEC needs some fixers. Wonder why.

I'm cc'ing some of our mutual friends on this email Jane. The last overt act of this massive ongoing, SEC facilitated conspiracy has not occurred yet.

Cheers!

Christopher J Dilorio

Whistleblower
[REDACTED]

From: Chris Dilorio <[REDACTED]>

Sent: Wednesday, June 10, 2020 2:30 PM

To: [REDACTED]
Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

Mr Roach,

The SEC is irrefutably using my information in unethical and illegal manner. My information is being used to BOTH Bring complaints AND obstruct/protect investigations into entities detailed in my various TCR's. Denying me rightful compensation. This is the latest example.....

Chris

From: Chris Dilorio <[REDACTED]>

Sent: Monday, May 18, 2020 10:36 AM

[REDACTED]
Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

As straightforward as it gets:

The SEC OWB dragged its feet for 5 years in issuing its preliminary denial notice.

The SEC knows this is my information. The SEC committed fraud on the court in Gibraltar. The judge corrected them. The SEC was omitting information that implicated NITE, UBSS and customers like Sason/Hanover/Magna. The SEC was obstructing a thorough investigation of my claims. The naked shorting cited in the CGFIA 10Q in 2013 PROVES my allegations. The SEC's "targeted investigation" stops short of a full accounting. The SEC Gibraltar complaint does NOT explain the totality of the Oppenheimer complaint. The SEC Gibraltar complaint cites 1 OTCM shell and less than 1 million shares traded by Opco. 2 dissenting Opco waiver SEC Commissioners proved that also citing "BILLIONS" of shares in their dissent. The SEC/Opco AML complaint was based on the FINRA complaint and my information. The SEC OWB concocted a completely fabricated reason for denying my Award: "The SEC investigators involved never saw claimants information". The responsibility to distribute Whistleblower information within the SEC is the exclusive and explicit responsibility of the OWB. As a result, the massive fraud taking place continued well into 2020. The 1Q2020 10Q proves this.

The SEC IG Hoecker is guilty of violating specific IG requirements in keeping Congress informed of serious matters like mine. The SEC IG Hoecker has never interviewed me despite my filing 2 separate complaints with his office. The SEC IG Hoecker is guilty of criminal obstruction. SEC Chair Clayton and Co Enforcement Peikin worked at Sullivan Cromwell with Jared Fishman. Fishman has played a key role in the SEC facilitated criminal obstruction. Peikin and Clayton should have recused themselves from ANY pending NITE/VIRT matter before the SEC: My information. Clayton and Peikin should have recused themselves from the SEC facilitated KCG/VIRT merger. My information, including the Opco AML complaint SHOULD have stopped the merger from ever happening. 2 former SEC Commissioners agree with that analysis. The SEC is actively facilitating a massive ,ongoing fraud on the American people they are mandated to protect. NITE/VIRT is a criminal entity. The SEC MUST invoke emergency powers and halt trading in VIRT IMMEDIATELY.

In short Mr Arp, the criminal activity actively perpetrated by the SEC OWB/IG must be referred to law enforcement as well as Congress. Separate but related: SEC facilitated criminal activity and my claims. The criminality is a matter for law enforcement. My pending matters with the SEC have no bearing on a criminal investigation OR a GAO investigation.

You are incorrect in your analysis.

I Urge the IG Integrity Board to have SEC IG Hoecker refute my claims point by point.

I will be on a plane tomorrow so he can do it in person.

Cheers!
Christopher J Dilorio
Whistleblower
[REDACTED]

From: Chris Dilorio <[REDACTED]>
Sent: Tuesday, May 12, 2020 8:54 AM
To: [REDACTED] <[REDACTED]>
Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

Almost immediately I filed a formal appeal to the SEC OWB fabricated denial of my award application. In this appeal I show irrefutable proof of my allegations: The SEC OWB used/ is using my information to both bring complaints AND obstruct complaints while denying me compensation. In short: My information exposes an ongoing, massive in scope, SEC facilitated fraud on the American people. Rather than shut it down, the SEC has chosen to cover up so that the illegal activity can continue. It does in 2020

Chris

From: Chris Dilorio <[REDACTED]>
Sent: Monday, May 11, 2020 7:16 PM

[REDACTED]

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

From: Chris Dilorio <[REDACTED]>
Sent: Wednesday, April 29, 2020 8:03 AM

[REDACTED]

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

The SMOKING GUN in my allegations:
Naked shorting in CGFIA (My TCR/FINRA complaint) by "un named third party BD" in 2013. Well known to the SEC. This is why there was no investigation into the ENTIRETY of the FINRA trading activity. The SEC issued waivers to Opco within days of its AML complaint. WHO was the SEC protecting? WHO were the customers and executing BD's/MM's in the Opco complaint? ALSO well known to the SEC:
MY INFORMATION. 5 years to get a preliminary denial: statute of limitations. BUT the last overt act of this ongoing conspiracy has not yet occurred.

Chris

From: Chris Dilorio <[REDACTED]>
Sent: Wednesday, April 29, 2020 7:56 AM

[REDACTED] >;
[REDACTED]

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

Still more evidence of a well orchestrated scheme to cover up and obstruct a FULL SEC investigation into Opco/Gibraltar/NITE/UBSS trading activity in billions of shares of OTCM money laundering shells. The SEC used my information to bring AND obstruct complaints.

The 2 SEC Commissioners dissent in granting Oppenheimer waivers after this egregious activity

<https://www.sec.gov/news/statement/dissenting-statement-oppenheimer-inc.html>

SEC.gov | Dissenting Statement In the Matter of Oppenheimer & Co., Inc.

Dissenting Statement In the Matter of Oppenheimer & Co., Inc., by Commissioner Luis A. Aguilar and Commissioner Kara M. Stein, February 4, 2015

www.sec.gov

In fact, the SEC waivers came within days of their complaint. Here, these 2 Commissioners cite Oppenheimer trading "BILLIONS of shares of penny stocks". Clearly, they were not JUST referencing the SEC Gibraltar complaint. WHO was the SEC protecting with its complaint then waivers?

The smoking gun which I have provided to the SEC on several e mails:

Which came in an SEC reviewed CGFIA 10Q

https://www.sec.gov/Archives/edgar/data/1344394/000135448814000425/cgfi_10q.htm

cgfi_10q.htm - SEC

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

www.sec.gov

pg 27

"Our stock is subject to a "Global Lock" imposed by the Depository Trust and Clearing Corporation (DTCC)"

"On September 24, 2013, we were notified that the DTCC would be placing a 'Global Lock' on the Company's Class A stock as a result of actions by a third-party broker dealer. On November 11 2013, DTCC imposed the "Global Lock". Since less than 0.02% of the Company's Class A common stock shares were held within DTCC, Management chose to not undertake the expense of challenging the Global Lock. Nevertheless, shares that are held in street name (CEDE & CO), will not be able to be withdrawn from DTCC without further action."

Of Course, I have hard copies if you prefer.

ex clearing: The illegal SEC/DTCC Obligation Warehouse.

This is CLEAR,IRREFUTABLE,INCONTROVETIBLE evidence of naked shorting by executing BD's in CGFIA. This activity took place per my Knight/UBSS TCR submitted to the SEC. So, WHY did the SEC obstruct an investigation into the ENTIRETY of the trading activity in the FINRA (and FINCEN) complaints? WHO were the executing BD's/MM's? WHO were the customers?

The veracity of my information is also irrefutable and incontrovertible.

Game. Set. Match. The SEC is a grossly corrupt, criminal enterprise facilitating illegal activity detailed by me so that this activity can continue. It does in 2020. The SEC solicits then uses Whistleblower information (MINE) to bring complaints AND obstruct other illegal activity while denying proper compensation to whistleblowers (ME). The SEC KNEW who the "third party BD" was in the CGFIA filing long before it filed its Opco complaint in 2015. It had my TCR in its possession in March 2013. So why did it take 5 years for the SEC to issue its preliminary denial? I would remind the SEC that this is very much an ONGOING conspiracy on the part of the SEC et al. IN FURTHERANCE OF THE CONSPIRACY.....

Cheers!

Christopher J Dilorio

Whistleblower
[REDACTED]

From: Chris Dilorio <[REDACTED]>

Sent: Tuesday, April 28, 2020 7:24 AM

[REDACTED];

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

Per my extensive SEC TCR's: Josh Sason/Emanuel/Abitebol/Hanover/Magna extensive overlap with NITE/VIRT (and AQR) money laundering shells.

The SEC Sason/Magna/NewLead Feb 2019 complaint: also my information

<https://www.sec.gov/litigation/complaints/2019/comp24403.pdf>

Marc P. [REDACTED] SECURITIES AND EXCHANGE COMMISSION Brookfield Place
200 Vesey Street, Suite 400 New York, NY 10281-1022 SOUTHERN
DISTRICT OF NEW YORK JOSHUA SASON, MARC MANUEL,

3 5. In addition, Pallas acted as an underwriter for a primary offering of NewLead stock, which NewLead attempted to disguise as an asset sale transaction.

www.sec.gov

https://www.sec.gov/Archives/edgar/data/1322587/000114420413065095/v361773_sc13g.htm

www.sec.gov

(i) Sole power to vote or to direct the vote . The information required by Item 4(c)(i) is set forth in Row 5 of the cover page for each Reporting Person hereto and is incorporated by reference for each such Reporting Person.

www.sec.gov

MG Partners Ltd: Abitebol

But not in the complaint: MAGNA GIBRALTAR INVESTMENTS LLC: also Abitebol

As with Opco/GIBRALTAR, who is the SEC protecting?

AND, per my extensive correspondence with the SEC re my TCR's: The SEC is ALSO grossly under estimating the criminal activity in NITE/Magna/NewLead

SEC: Criminals bailing out/actively facilitating criminals/criminal activity.

soliciting/using whistleblower information in unethical/illegal manner to bring complaints/obstruct complaints/deny whistleblower rightful compensation.

Cheers!

Christopher J Dilorio

Whistleblower

From: Chris Dilorio <[REDACTED]>

Sent: Tuesday, April 28, 2020 6:43 AM

[REDACTED];

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

More evidence of SEC fraud on the court in Gibraltar.

It is CLEAR that the Opco AML Covered Action 2015-016 was NOT ENTIRELY based on the SEC Gibraltar Action. The SEC Gibraltar action covered trading activity in just 1 OTCM Money laundering shell: Magnum d'Or where Opco traded less than 1 million shares. CLEARLY the SEC Opco complaint was based on the trading activity in the FINRA Opco AML complaint: my information. However, the SEC Opco complaint even stops short of a thorough investigation of the ENTIRETY of the FINRA trading activity. WHY? WHY didn't the SEC Opco/Gibraltar complaint go into trading activity in the FINRA AML OTCM shells through 2014 as FINCEN did? WHY did the SEC omit MATERIAL information to the court in Gibraltar causing a "significant under estimating" of criminal activity? The SEC knows who the accounts were. The SEC knows who the executing BD's/MM's were. The SEC committed a fraud on the court in Gibraltar.

Gibraltar was ROLLING OUT NEW OTCM services into the end of 2011.

<https://www.pr.com/press-release/355246>

Gibraltar Global Securities Now Offering Offshore Brokerage Accounts -
PR.com

Nassau, Bahamas, The, September 22, 2011 --()-- Gibraltar Global Securities is now offering offshore brokerage accounts in addition to their broad array of financial services.Gibraltar Global ...

www.pr.com

<https://www.pr.com/press-release/355247>

GGSI Bahamas is Now Offering Pink Sheet Clearance

Offshore Broker Adds to Buying and Selling Services

www.pr.com

<https://www.pr.com/press-release/369649>

GGSI Bahamas Provides State-of-the-Art Security for OTC PINK Transactions and Communication

GGSI (Gibraltar Global Securities Inc.) has just announced the release of their latest security measures designed to protect their client's personal data, and to secure electronic communication.

www.pr.com

The SEC KNEW the Gibraltar/Opco trading activity went well beyond 2011 YET cut off its investigation at "well into 2010". Thus, KNOWINGLY omitting material information in Gibraltar: FRAUD ON THE COURT.

Confirming my allegations of SEC criminal activity in handling my information. WHY? to protect NITE and UBSS. 2 criminal entities bailed out by the SEC.

Now, the SEC is using the completely fabricated reason for denying my award claim for covered action 2015-016: "The investigators never saw the claimants information".

WHEN the explicit and exclusive responsibility to distribute whistleblower information within the SEC falls on the OWB itself.

More criminal activity.

Criminals bailing out criminals while denying Whistleblowers due process and compensation.

Cheers!

Christopher J Dilorio

[REDACTED]

Whistleblower

From: Chris Dilorio <[REDACTED]>

Sent: Sunday, April 26, 2020 9:36 AM

To: [REDACTED]

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

From: Chris Dilorio <[REDACTED]>

Sent: Friday, April 24, 2020 8:18 AM

[REDACTED] >; [REDACTED] <[REDACTED]>;
[REDACTED] <[REDACTED]>; [REDACTED]

Subject: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

I am in receipt of the SEC preliminary denial of my award claim for the Oppenheimer AML covered action 2015-016

This is my formal appeal of the SEC preliminary determination.

My award application was based on this very simple FACT:

The SEC (and FINCEN) Oppenheimer AML actions were based on the FINRA Oppenheimer AML action

FINRA

https://www.finra.org/sites/default/files/fda_documents/2009018668801_FDA_KMX39652.pdf

of - FINRA

which is FINRA a party, to the entry of findings and violations consistent with the allegations of the (as Complaint sanctions amended and by the Offer of Settlement), to the imposition of the set forth and below, understands fully that this Order will become part of Respondent's permanent disciplinary and record may any be considered in future actions brought by FINRA. BACKGROUND ...

www.finra.org

The SEC

<https://www.sec.gov/litigation/admin/2015/33-9711.pdf>

Before the SECURITIES AND EXCHANGE COMMISSION

Before the . SECURITIES AND EXCHANGE COMMISSION . SECURITIES ACT OF 1933 . Release No. 9711 / January 27, 2015 . SECURITIES EXCHANGE ACT OF 1934 . Release No. 74141 / January 27, 2015 . ACCOUNTING AND AUDITING ENFORCEMENT . Release No. 3621 / January 27, 2015 . ADMINISTRATIVE PROCEEDING . File No. 3 -16361 . In the Matter of

www.sec.gov

FINCEN

<https://www.fincen.gov/news/news-releases/fincen-fines-oppenheimer-co-inc-20-million-continued-anti-money-laundering>

FinCEN Fines Oppenheimer & Co. Inc. \$20 Million for Continued Anti-Money Laundering Shortfalls | FinCEN.gov

Washington, D.C. – The Financial Crimes Enforcement Network (FinCEN), working closely with the U.S. Securities and Exchange Commission (SEC), assessed a \$20 million civil money penalty today against Oppenheimer & Co., Inc., for willfully violating the Bank Secrecy Act (BSA). Oppenheimer, a securities broker-dealer in New York, admitted that it failed to establish and implement an adequate ...

www.fincen.gov

In the summer of 2012, I had extensive correspondence with Robin Traxler at FINRA where I also cc'd Sean McKessy then SEC OWB Chief. The CURRENT OWB Chief and the SEC IG are in possession of this correspondence. My correspondence dealt with 2 penny stock shells cited in my Knight Capital TCR submitted by [REDACTED] Montague in March 2013 attached here: Colorado Goldfields and AppTech. Both shells were NITE and UBSS top traded OTCM shells in 2010-2013. These 2 shells were cited by FINRA in their Oppenheimer AML complaint. Again, the SEC and FINCEN Oppenheimer AML complaints were based on this FINRA complaint. In fact, per the FINRA Opco complaint above, customer "TC" was dumping worthless AppTech (APCX) certificates well into mid 2010. DIRECTLY overlapping with the NITE/UBSS APCX trading activity cited in my [REDACTED] 2013 TCR attached and discussed by me with Robin Traxler at FINRA. HOW is it possible that the SEC OWB didn't share my information with SEC investigators? Current SEC OWB Chief Norberg was previously an assistant to then OWB Chief McKessy.

WHO ultimately executed the trades cited in the FINRA Opco complaint?

Further, the SEC Gibraltar Securities complaint raises more questions than answers as well.

<https://www.sec.gov/litigation/complaints/2013/comp22683.pdf>

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK SECURITIES AND EXCHANGE COMMISSION, 13 Civ. GffirALTAR GLOBAL SECURITIES, COMPLAINT NATURE OF THE ACTION - SEC.gov

12. David Della Sciucca, Jr., age 27, is a resident of Fort Lauderdale, Florida. In the Magnum d'Or complaint, the Commission charged Della Sciucca with acting as a nominee

www.sec.gov

The SEC Gibraltar Securities complaint references only 1 OTCM money laundering shell: Magnum d'Or. The complaint specifically states that Oppenheimer sold just 969,822 shares. Again, no mention of executing BD/MM.

The SEC Oppenheimer AML cites Gibraltar trading activity also.

The share amounts in the SEC complaint grossly under estimate that in the FINRA complaint. WHY?

The judge in the Gibraltar case said "the SEC's requested amount CLEARLY UNDERESTIMATES the defendants ill-gotten gains...."

<http://www.tribune242.com/news/2016/jan/13/bahamian-broker-25m-sanction/>

Bahamian broker in \$25m sanction | The Tribune

A former Bahamian broker/dealer and its principal have been hit with a combined \$24.484 million in financial sanctions by a US court, which found that their "ill gotten gains" were likely ...

www.tribune242.com

WHY didn't the SEC go after ALL of the sellers in the FINRA Opco AML complaint? WHY did the SEC "strip out" \$46 million from the Gibraltar ill gotten gains claiming the customers were "UNKNOWN"? WHO is the SEC protecting? WHO were the executing BD's/MM's in the FINRA Opco CGFIA and APCX trades? They certainly know who the customers were. Is customer "JK" Justin Keener/JMJ also in my March 2013 TCR attached? While the SEC Opco AML was based on the FINRA Opco AML, it stopped short of a thorough investigation of NITE and UBSS. In fact, the trading activity of NITE/VIRT and UBSS in the FINRA complaint: my information SHOULD have triggered an immediate investigation of NITE and UBSS. It did not. Did the SEC commit fraud on the court in its OMISSION of material information?

The timing of the SEC's preliminary determination and the reasoning for the denial ALSO raises more questions than answers.

My Award application for the Oppenheimer AML SEC complaint was 5 years ago. That's FIVE years ago. So, WHY NOW am I so blessed by the SEC with a preliminary judgement?

The SEC basis for denying my Award claim for covered action 2015-016:

"Investigative staff responsible for the covered action NEVER RECEIVED ANY INFORMATION FROM THE CLAIMANT OR had any communication with the claimant"

Let's take this whopper in 2 parts:

First, the SEC OWB denied my Award application because The investigators in the complaint never received my information. Has the SEC OWB re written the investigative protocol in this denial? How am I or ANY whistleblower supposed to know WHO the investigators are in a particular case WHEN according to the SEC: ALL investigations are done in a confidential manner????

WHAT DOES THE SEC DO WITH WHISTLEBLOWER TIPS EXACTLY? Do they share whistleblower information with ENFORCEMENT as is mandated? HOW would ANY whistleblower know WHO to share information with at the SEC? Isn't that the job of the SEC OWB?

Second, the fact that no one at the SEC contacted me DOES NOT mean the SEC didn't use my information. This is a completely bogus argument. It certainly would NOT be the first time the SEC used my information now would it Jane?

In fact, it is NOT the responsibility of the whistleblower to get his/her information to the right Enforcement personnel. That responsibility EXPLICITLY falls on the SEC OWB. So, is the SEC OWB admitting gross negligence in handling my information? After the monumental failure in the Madoff Ponzi/ money laundering SEC facilitated scam on the public the then SEC IG made specific recommendations to the SEC with regards to the proper handling/vetting of Tips and Complaints.

<https://www.sec.gov/files/468.pdf>

Review and Analysis of OCIE Examinations of Bernard L. Madoff Investment Securities, LLC

AGAIN: The responsibility to properly vet Whistleblower information and get the information into the right hands at the SEC falls EXPLICITLY and EXCLUSIVELY with the SEC OWB itself and is NOT the responsibility of the whistleblower. Further, according to the previous SEC IG in the monumental Madoff failure: the responsibility to contact those supplying Tips and Complaints ALSO falls explicitly and exclusively with the SEC OWB and not the whistleblower. Using these excuses as the basis of denial of Award is completely contrary to SEC MANDATED protocols and procedures.

Is the SEC OWB admitting it doesn't comply with those recommendations? Recall: the monumental SEC Madoff failure was NOT the fault of Whistleblowers either. OR is the SEC OWB scrambling for a 5 years in the waiting preliminary determination?

So, after 5 years of waiting for a preliminary determination for my award claim, this is what the SEC best and brightest come up with?

My Denial of Award for covered action 2015-016 was completely made up on the fly.

The SEC OWB has applied completely fabricated "rules" to issue this denial. Further affirmation of ALL of my allegations.

Also by SEC admission, the SEC allowed these 2 penny stock shells to remain a clear and present risk to the investing public. Were CGFIA and APCX ONLY money laundering shells for Oppenheimer in 2008-2010 and then suddenly they were no longer money laundering shells when NITE and UBSS traded billions of shares of both shells 2010-2013?

WHY did it take until September 2018 before the SEC finally revoked the CGFIA registration?

<https://www.sec.gov/cgi-bin/browse-edgar?company=Garpa&owner=exclude&action=getcompany>

So, WHY was there no SEC investigation of NITE and UBSS trading activity in money laundering shells APCX and CGFIA? The SEC et al facilitated NITE "glitch" took place in August 2012. This SEC/Jefferies/JPM/BX/GS/SEC Chair Clayton Sullivan Cromwell colleague Jared Fishman et al bailout coincides directly with NITE trading activity in 2 SEC/FINRA/FINCEN acknowledged money laundering shells. AND the "bailout" penny stock esque reverse merger between Getco and Knight didn't close until July 2013. HOW could the SEC conduct a COMPLETE and thorough investigation into the FINRA Opco AML complaint WITHOUT implicating NITE when NITE was CLEARLY trading billions of shares of OTCM money laundering shells BEFORE and coinciding with the SEC et al facilitated "glitch" bailout? For UBSS, the DOJ dropped its cross border AML DPA complaint in 2010. UBSS was trading money laundering shells well after the DOJ claimed UBSS was in compliance with the cross border DPA. To be clear: BOTH NITE and UBSS knew CGFIA and APCX were money laundering shells when they traded billions of shares of each 2010-2013. Is that FACT disputed by the SEC? The SEC OBSTRUCTED a thorough investigation into the ENTIRETY of trading activity of NITE and UBSS in CGFIA and APCX: MY CLAIMS. Josh Sason/Hanover/ Magna knew CGFIA was a money laundering shell also

<https://www.sec.gov/Archives/edgar/data/1344394/000114420413041432/0001144204-13-041432-index.htm>

ALSO in my claims: Joshua Sason/Hanover Magna. CGFIA. Also my NewLead TCR1426518350699 and FreeSeas TCR1440274395191 separate but related TCR's where NITE was a top trader in both and BOTH TCR's were filed well in advance (years prior) to the Sason/Hanover/Magna February 2019 complaint. Here's one thing the SEC has been consistent about: The SEC ignores the role of executing BD's and MM's in these scams. WHY? Because NITE is the #1 OTCM shell trader. As far as the SEC is concerned Penny stock trading fairies convert worthless certificates into real money. NO! Executing BD's/MM's like NITE do. Did Oppenheimer sell this order flow to NITE? Who ultimately converted these worthless certificates to real money? As the number 1 OTCM money laundering shell trader it is statistically improbable the NITE has never been the focus of an SEC AML complaint.

Per my TCR: what does the NITE Compliance Department do exactly? How many SAR's has NITE filed in the last 10 years? In a 2015 SIFMA speech then SEC Enforcement Director Ceresney was "SHOCKED" by the number of BD's filing 1 or ZERO SAR's. That was just 5 years ago. WHEN would NITE file a SAR related to the billions of shares of OTCM money laundering shells it trades like CGFIA and APCX: BEFORE or AFTER it trades those BILLIONS of shares? Does NITE pull markets and alert regulators OR continue to trade billions of shares of OTCM money laundering shells in the face of GLARING AML red flags? In fact, in December 2019 the top traded NITE/VIRT OTCM money laundering shell was ELTZ

<https://www.sec.gov/cgi-bin/browse-edgar?action=getcompany&CIK=0001607281&owner=exclude&count=40&hidefilings=0>

The SEC knows the people/entities in ELTZ well

<https://www.sec.gov/litigation/admin/34-46993.htm>

Strata Coal Company and Terrence A. Tecco: Admin. Proc. Rel. No. 34-46993 / December 13, 2002

Strata Coal Company ("Strata" or "the company") is a non-reporting Nevada shell corporation based in Frisco, Texas. Strata's shares are quoted on the Pink Sheets under the symbol SCOC. Until September 2002, the company was known as WesPac Technologies, at which time it changed its name to Strata. 2. Tecco is the sole officer, director, and ...

www.sec.gov

<https://www.sec.gov/news/press-release/2019-16>

SEC.gov | SEC Charges Broker-Dealer and Transfer Agent in Microcap Shell Factory Fraud

The Securities and Exchange Commission today announced charges against a broker-dealer, a transfer agent, and three individuals for their roles in the creation of over a dozen undisclosed "blank check" companies from 2009 to 2014.

www.sec.gov

Doesn't the NITE/VIRT compliance Department have internet service in Jersey City? As a DIRECT result of the SEC obstructing a complete and thorough investigation into the ENTIRETY of trading activity in APCX and CGFIA, the top NITE/VIRT traded OTCM money laundering shell in December 2019 was AML red flags galore ELTZ. Illegal activity ACTIVELY facilitated by the SEC. The examples cited in this e mail are not exhaustive.

And, for it's part AppTech is up and running again/still

<https://www.sec.gov/cgi-bin/browse-edgar?company=Apptech&owner=exclude&action=getcompany>

Unfortunately, AppTech is still up and running as a direct result of the aforementioned SEC " CLEARLY under estimating" otherwise known as CLEARLY OBSTRUCTING.

In conclusion, The SEC solicits information from whistleblowers like me. The SEC uses whistleblower information to bring actions and then doesn't compensate whistleblowers for their information.

OR

The SEC uses whistleblower information to protect criminality perpetrated on the investing public so that this criminal activity can continue. BOTH are gross dereliction of the stated and MANDATED SEC Whistleblower statutes. To blame a whistleblower for the SEC's EXPLICIT and EXCLUSIVE responsibility to properly vet and distribute whistleblower information within the SEC as an excuse to deny Awards is also criminal activity. The SEC: criminals using whistleblower information to protect other criminals AND deny whistleblower rightful compensation for their information.

I appeal the SEC preliminary determination and wish to file ANOTHER complaint with the SEC IG.

Cheers!

Christopher J Dilorio

Janey,

how long have you been in possession of my Knight Capital TCR? Almost 7 years to the day. How many follow up e mails have I sent the SEC since then?

For 7 fucking years, the SEC has known about JMJ/Keener. I told them
<https://www.sec.gov/litigation/complaints/2020/comp-pr2020-72.pdf>

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA SECURITIES AND EXCHANGE COMMISSION No. COMPLAINT SUMMARY - sec.gov

5. Justin W. Keener, age 45, resides in San Juan, Puerto Rico. During the Relevant Period, Keener was a resident of Miami Beach, Florida. Keener registered the name "JMJ Financial" as a fictitious name in Florida in 2008 and used it to conduct the business described

www.sec.gov

In February 2019, the SEC brought an action against Joshua Sason/NewLead
I told the SEC about Magna/ Sason ALSO in my 2013 TCR.

<https://www.sec.gov/litigation/litreleases/2019/lr24403.htm>

Joshua Sason, et al. (Release No. LR-24403; Feb. 15, 2019)

Washington, D.C., February 15, 2019 - The Securities and Exchange Commission today announced charges against four individuals and related businesses for their roles in two microcap frauds and unlawful securities offerings.

www.sec.gov

AND, I filed separate but related NewLead and FreeSeas TCR's in 2015

Then there's the UBS AML complaint.

ALSO my claims. For which I sent 10 (TEN) separate Award applications from a commercial fax machine in April/May 2019. AND I have YET to receive even a preliminary determination from the OWB/Norberg IG, I see your "investigation" into my very very serious accusations of Obstruction related to my information was thorough. In short, the SEC has and still is ripping me off.

Janey, be a hun and update my TCR's/Awards cited in this e mail.

And Ms Welshhans, a couple of questions for you:

1) Have you read the FINRA WTFC Keener complaint? Fictitious notes Ring a bell?

Same MO as Sason/Magna/NewLead/FreeSeas etc etc etc

2) WHO executed the Keener OTCM trades in your complaint? Penny stock trading fairies?

YES, NITE was a top trader in BOTH FreeSeas and NewLead

The core business at NITE/VIRT is and ALWAYS has been: abusive naked shorting OTCM (and other) shells to facilitate money laundering.

In short Ms Welshhans, NITE/VIRT converts these worthless certs into real money. NONE of JMJ/Sason/IBC/Ironridge/Asher etc etc etc activity takes place without a willing, corrupt, criminal, executing BD/MM like NITE/VIRT, CDEL etc

Finally, The Keener SEC complaint is FURTHER evidence that FINRA has NO business enforcing US securities LAWS. When FINRA "invited" Keener to a disciplinary hearing almost 7 years ago, Keener told them to "fuck off". FINRA bar meant nothing the last 7 years. EXCEPT JMJ/Keener/NITE ripping off more investors.

Obviously the SEC has/is using my information. I expect to be compensated.

Cheers!

Christopher Dilorio

Whistleblower

Mr Peirce,

Congratulations on your nomination as SEC Commissioner. I have read your paper on FINRA lack of accountability. I believe the SEC has abdicated its responsibility to enforce Broker Dealer compliance with the BSA to FINRA BECAUSE it is not accountable. The SEC has not initiated a single stand alone AML complaint. The Brown Brothers Harriman AML complaint IS my claim. ALL of the entities in the complaint are un named WHY? My SEC and IRS Whistleblower complaints explain why.

Hello, My name is Chris DiIorio. I have filed extensive SEC and IRS Whistleblower complaints alleging a direct link between penny stock money laundering, domestic and foreign entities, Swiss Banks, and executing brokers like KCG and UBS. I can provide overwhelming evidence of SEC obstruction. Please read the FINRA Brown Brothers Harriman AML complaint. This is my claim. All of the entities in the complaint are un named. Why? The SEC is not only obstructing an investigation, they are aiding and abetting the activity. These are not far flung theories. The UBS Whistleblower Birkenfeld and his attorney sent 52,000 accounts to the SEC and DOJ. The DOJ at the influence of President Obama and Hillary Clinton entered into the UBS DPA based on just 4400. What is so egregious is the activity continues unabated today.

Start with the so called August 2012 Knight/KCG trading "glitch". Initial reports say the NYSE was breaking the trades. WHY did they stop. Former KCG CEO Joyce said he had a very frank discussion with then SEC Chair Schapiro where the SEC wanted to send a very strong message to market participants. Why not just continue to

break the trades and hit KCG with a hefty fine? That would not create the conditions to grant KCG exception after exception to do their emergency funding which transferred 74% of the company to "glitch" funding participants and ultimate reverse merger partner GETCO. AND, despite claiming to having a "highly liquid balance sheet" KCG had to raise the entire amount of the loss.

A very significant and public event was cited in a WSJ article where immediately following the "glitch" KCG inadvertently sent 4000 worthless securities to JPM in an attempt to secure a tri party financing where JPM guaranteed the loan. This is discussed in my attached TCR's and also the topic in a March 2014 letter I sent to the SEC. In the end, the emergency funding was NOT collateral based. The participants knew exactly what a fraud the KCG balance sheet was. After the stock was decimated to \$3, the deal was a convertible with a conversion price at a 50% discount or \$1.50/ share.

There is much more, but this is a good start.

Recently, KCG did a modified Dutch auction where they "sold" an asset (HotSpot) to an entity both KCG and GETCO were a major shareholder (BATS) KCG CEO Coleman called it a "highly competitive process".

Virtually all of the proceeds went to buy back stock from "glitch" financing participants. The purchase price was \$14/share. The stock had never traded there and hasn't since. Reports say 82 million shares were tendered at or BELOW \$14. But they chose to repurchase 23 million shares AT \$14????? I have overwhelming evidence that supports my allegations that the SEC is engaging in criminal obstruction to protect KCG.

1) Current KCG Dan Coleman ran Equities at UBS during the massive REG Sho violations as well as the cross border activity detailed by Whistleblower Birkenfeld. White and Ceresney represented UBS prior to joining the SEC

2) At June 30 2011 KCG/Knight reported just 105 million in working capital with hundreds of millions in worthless securities sitting on its balance sheet. KCG was insolvent

3) The SEC orchestrated the emergency funding for KCG following the so called Aug 2012 trading "glitch"

4) Read FINRA AML complaints against Brown Brothers Harriman. This is my claim. It links penny stock money laundering to executing brokers like KCG, domestic and foreign entities, and Swiss banks. ALL of the entities in the complaint are un named. WHY?

5) The FINRA World Trade Financial AML complaint discusses several entities cited in my claims. The customer the complaint focuses on is Justin Keener. Still very much in business. The red flags cited by FINRA were cited in my claims as well. Yet still no investigation.

6) in July 2015 I contacted Kevin Goodman Dir OCIE for Broker Deals at the SEC. He had never seen my information. The IG OCIE Madoff report mandated the OCIE to vet information. McKessy and Ceresney never sent my info to him

7) I'm sure you are familiar with the Manning v Merrill, KCG, UBS et al litigation. The SEC does not want an investigation into my claims while the litigation is pending.

8) My claims detail ex clearing trading activity by KCG and UBS. despite the glaring red flags in doing so. Ex clearing s the Obligation Warehouse. A NON GUARANTEED SERVICE set up by the SEC and DTCC to allow firms like KCG to circumvent close out requirements of Rule 204. Clearly contrary to the intent of the SEC authorization in Sec 17a of the 1934 Act to create a system of prompt and timely settlement and to remove impediments there of.

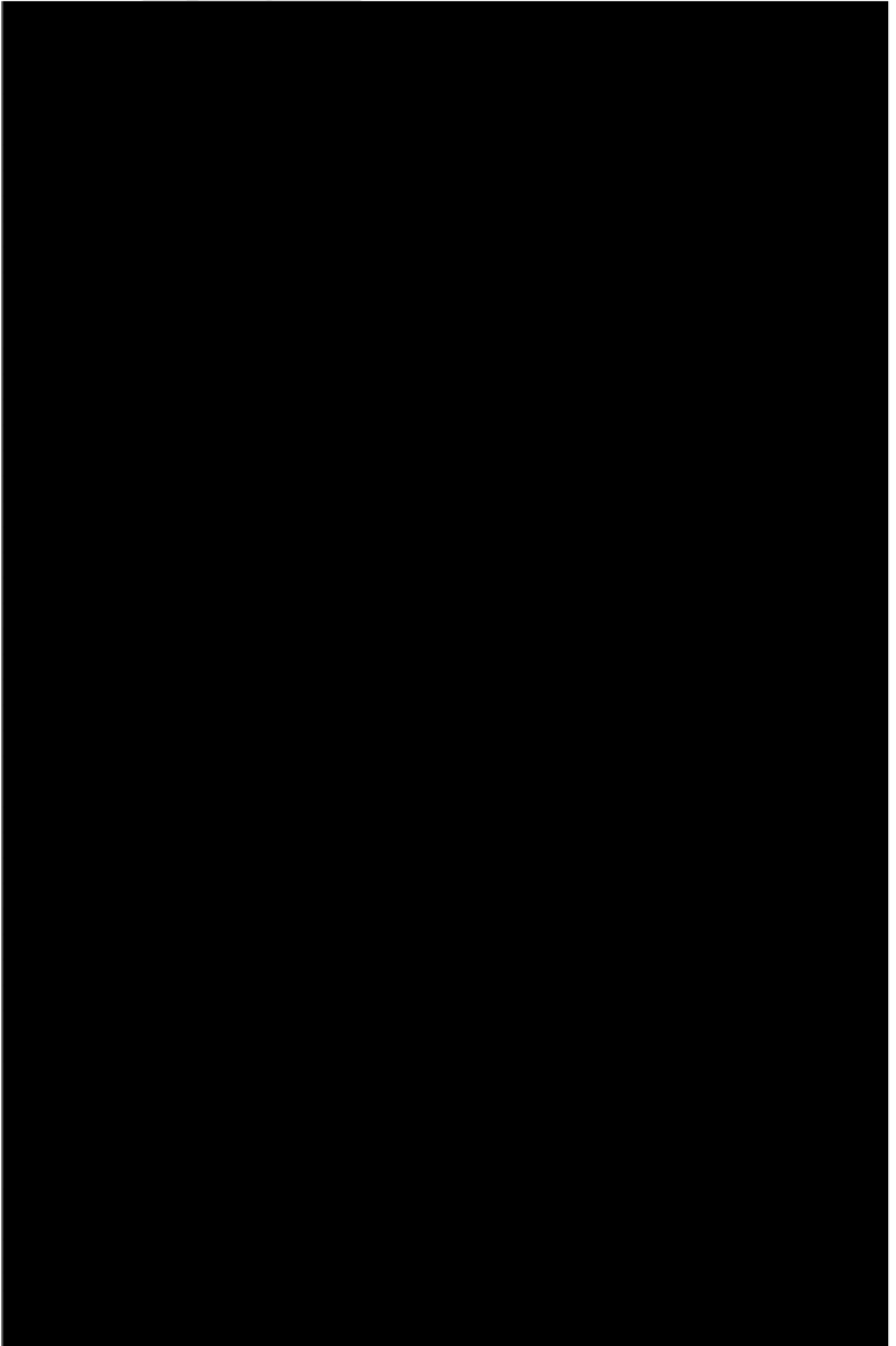
In short, I told the SEC KCG was insolvent in 2011. Rather than investigate and prosecute, they chose to obstruct. The activity in my TCR's pre dates the "glitch". An investigation would show the SEC bailed out a criminal enterprise. Because of the obstruction, the activity continues today unabated in stocks like STBV, VELA, NEWL, FREE, and dozens more. The investing public remains at risk

More to come

Chris DiIorio

From: Chris Dilorio <[REDACTED]>

To:



[REDACTED]

Subject: Fw: Formal appeal for denial covered action 2015-016/ Knight Capital TCR & Appendix

Date: Fri, 28 May 2021 14:58:07 +0000

Attachments: KCG_Appendix_3-20_13_penultimate.docx; KCG_TCR_3-20-13-penultimate_draft.pdf; KCG_TCR_3-20-13-penultimate_draft.docx; KCG_Appendix_3-20_13_penultimate.pdf

SDNY/NY Supreme Court/NJ judges: My apologies. I think I typed too fast for many on this email. Let me state plainly what I allege: For that, I turn directly to UBS Sell Side Analyst Alex Kramm who had quite the exchange with Cifu on the 1Q 2021 earnings call earlier this month.

Mr Kramm: based on my analysis below, tell everyone WHY you think Cifu chose to be "Less transparent" with regards to 1Q 2021 share volumes?

I'll type slower this time:

1Q 2021 OTCM total reported share volumes: 4+ TRILLION

Cifu on the call(I have electronic version should you prefer)

"Yes Dan (Jefferies analyst Fannon), obviously, you look at the same metrics I do, just to give you a little commentary on them (without actually disclosing them), I mean April volumes were a hair under 10 billion shares per day....."

Mr Kramm: this is a knowingly, blatantly false and misleading statement. Accurately: a bald face lie. This is why Cifu won't disclose the actual share volumes.

Per below: in 1Q 2017: the last stand alone KCG quarter: OTCM share volumes were reported in SEC reviewed 10Q at 9+ billion shares/day. Back when OTCM TOTAL SHARE VOLUMES were reported in the 100-300 billion shares per month.

Yet, in 1Q 2021 when total reported OTCM share volumes were more than 1 TRILLION shares per month, hitting almost 2 TRILLION shares in Feb 2021, Cifu would have us believe NITE Equity market making share volumes were a "hair under 10 billion shares per day".

A blatant LIE. The SEC knows EXACTLY what the NITE equity share volumes were in 1Q2021. And it was a LOT MORE than "a hair under 10 billion shares/day". Driven of course by OTCM Money laundering shells.Trading profits: illegal naked shorting. Exploding balance sheet. Insolvent still/again.

Once again, the SEC facilitating/covering up a MASSIVE ongoing fraud on the public to the benefit of the criminals who own them while screwing the whistleblower who caught them: ME

Have a GREAT long weekend!

Christopher J Dilorio

Whistleblower Extraordinaire

[REDACTED]

From: Chris Dilorio <[REDACTED]>

Sent: Friday, May 28, 2021 7:25 AM

[REDACTED]



Subject: Fw: Formal appeal for denial covered action 2015-016/ Knight Capital TCR & Appendix

Ms Pasquinelli,

There have been 3 (THREE) SEC actions CLEARLY based on my information that also CLEARLY qualify for OWB Award eligibility.

Sason/Keener/Salviola et al: NewLead

[Joshua Sason, et al. \(Release No. LR-24403; Feb. 15, 2019\) \(sec.gov\)](#)

[Joshua Sason, et al. \(Release No. LR-24403; Feb. 15, 2019\)](#)

SEC Files Charges in Elaborate Microcap Stock Fraud Litigation Release No. 24403 / February 15, 2019
Securities and Exchange Commission v. Joshua Sason, et al.

www.sec.gov

John Fife

EFTA00039691

[John M. Fife, Chicago Venture Partners, L.P., Iliad Research and Trading, St. George Investments LLC, Tonaquint, Inc., and Typenex Co-Investment, LLC \(Release No. LR-24886; Sep. 3, 2020\) \(sec.gov\)](#)

John M. Fife, Chicago Venture Partners, L.P., Iliad Research and Trading, St. George Investments LLC, Tonaquint, Inc., and Typenex Co-Investment, LLC (Release No. LR-24886; Sep. 3, 2020) - SEC.gov

The Securities and Exchange Commission today filed charges against John M. Fife of Chicago and companies he controls for acquiring and selling more than 21 billion shares of penny stock without registering as a securities dealer with the SEC.

www.sec.gov

Justin Keener/JMJ

[Justin W. Keener d/b/a JMJ Financial \(Release No. LR-24779; Mar. 24, 2020\) \(sec.gov\)](#)

Justin W. Keener d/b/a JMJ Financial (Release No. LR-24779; Mar. 24, 2020) - SEC.gov | HOME

SEC Charges Unregistered Penny Stock Dealer Litigation Release No. 24779 / March 24, 2020 Securities and Exchange Commission v. Justin W. Keener d/b/a JMJ Financial, No. 20-cv-21254 (S.D. Fla. March 24, 2020)

www.sec.gov

ALL: My information.

Yet NONE of these actions have been posted to the OWB Award Eligible website

[SEC.gov | Office of the Whistleblower](#)

SEC.gov | Office of the Whistleblower

NOTICE: Until further notice, any Whistleblower Award Applications submitted by mail should be sent to the following address due to the mandatory telework posture at the SEC's Washington, DC headquarters: 14420 Albemarle Point Place, Suite 102, Chantilly, VA 20151-1750.

www.sec.gov

SEC IG Hoecker: HOW IS THIS REMOTELY PLAUSIBLE??

There is only 1 explanation: SEC criminal obstruction and corruption.

Like the Dick Best/FINRA BBH complaint: also my information. No mention of executing broker dealers/MM's.

OR as the SEC would like us to believe: "Penny stock trading fairies"

NO!

The SEC in ALL of these actions is protecting the criminal enterprise which has been bailed out on multiple occasions: Knight/KCG/VIRT:NITE

Automatically placing this criminal enterprise on the SEC "Do not investigate list".

As a result, the SEC has KNOWINGLY, ACTIVELY facilitated countless, ongoing frauds on the public it is mandated to protect. ALL of the illegal activity I have detailed is ongoing in May 2021. NITE is again/still insolvent. Cifu in the latest attempt to conceal this massive illegal activity has once again limited transparency for the investing public. The NITE Q1 earnings call: May 4, 2021

[Virtu Financial Inc \(VIRT\) Q1 2021 Earnings Call Transcript | The Motley Fool](#)



Virtu Financial Inc (VIRT) Q1 2021 Earnings Call Transcript | The Motley Fool

Virtu Financial Inc (NASDAQ:VIRT) Q1 2021 Earnings Call May 4, 2021, 8:30 a.m. ET. Contents: Prepared Remarks; Questions and Answers; Call Participants; Prepared Remarks: Operator. Good day, and ...

www.fool.com

Cifu: "April volumes were a hair under 10 billion shares per day....."

So, the last 10Q filed by KCG/Knight as a stand alone company was 1Q 2017. The VIRT acquisition closed on July 31, 2017. Cifu won't disclose and the SEC let him KCG 2Q2017 financials. BLATANT fraud. Cifu/ the SEC wrote down more than \$4 billion in fails.

[EDGAR Search Results \(sec.gov\)](#)

The 1Q2017 KCG 10Q

[Document \(sec.gov\)](#)

pg 49

Market Making stats. Cifu no longer discloses in SEC reviewed filings

Avg daily OTC BB and OTC Market shares traded (millions) 9,096

Avg daily NYSE AND NASDAQ shares traded (millions) 986

Per my consistent correspondence with the SEC: Knight/KCG:NITE derived 80-90%+ of their equity Market making share volumes from OTCM . This is why VIRT acquired KCG/Knight. This is and always has been the core business at NITE. This is what Cifu conceals from the investing public. In May 2021.

As I have also detailed over the last several years: FINRA share stats data is complete fraud. This ALSO continues in May 2021

[Market Statistics - Equity Trading Data Monthly \(finra.org\)](#)

At the top of the page: "Last month statistics: April-2021 Share volume 44+BILLION shares"

Yet below that under April share volumes:TOTAL SHARES: 928+BILLION

The Knight/KCG/VIRT: NITE balance sheet in 1Q 2021 filed with the SEC in May 2021

The balance sheet is AGAIN exploding

[Inline XBRL Viewer \(sec.gov\)](#)

NOT HFT related where holding time is seconds

Tangible book after properly classifying naked short fails: booked as an asset: receivable due to self clearing: insolvent. By a VERY wide margin.

ALL as a direct result of ONGOING SEC criminal obstruction and corruption.

So, Ms Pasquinelli: who was the executing BD/MM converting all of these fraud notes into worthless certs and dumped on the investing public where they are converted to real money? WHY would ANY BD/MM execute these trades? HOW do OTCM money laundering shells trade to trip zeroes? More buyers than sellers? NOPE: illegal naked shorting to facilitate money laundering. That is why none of these actions have been posted to the OWB website. Even though they CLEARLY are eligible actions: My information.

Cheers!

Chris

From: Chris Dilorio <[REDACTED]>

Sent: Thursday, May 27, 2021 5:49 AM

Subject: Fw: Formal appeal for denial covered action 2015-016/ Knight Capital TCR & Appendix

More Honig/Stetson et al SEC facilitated ONGOING fraud on the public

David Urban: Trump PA Campaign Manager and NITE Not So Independent Board Member and his own money laundering shell: FSD Pharma: HUGE with Pakistani's

Had a BINDING LOI to acquire Israeli Therapix.

[FSD Pharma Responds to Therapix Termination of Binding LOI | Business Wire](#)

Not so binding. I caught them. Plan B

Therapix: An Israeli money laundering shell where Stetson was "investor"

[EDGAR Filing Documents for 0001493152-17-003810 \(sec.gov\)](#)

and never shut down by the SEC as is typical of many Honig money laundering shells

[EDGAR Search Results \(sec.gov\)](#)

Today, Therapix is now Sci Sparc Ltd
SEC approved offerings done By Aegis

[SEC FORM D](#)

Yes: that Aegis: also very much up and running in May 2021. New York: SDNY jurisdiction

We don't need no stinkin' SAR's. Aegis prolific OTCM/NASDAQ shell money launderer

[Aegis Capital Corporation \(sec.gov\)](#)

UNITED STATES OF AMERICA Before the SECURITIES AND EXCHANGE
COMMISSION ADMINISTRATIVE PROCEEDING File No. 3-18412 ORDER
INSTITUTING ADMINISTRATIVE PURSUANT TO SECTIONS 15(b) AND 21C
OF THE SECURITIES EXCHANGE ACT OF 1934 AND SECTION 203(e) OF
THE INVESTMENT ADVISERS ACT OF 1940, - SEC.gov | HOME

3 As a result of the foregoing, Aegis willfully 2 violated Exchange Act Section 17(a) and Rule 17a-8
thereunder. RESPONDENT Aegis is a dually-registered investment adviser and broker-dealer with multiple
branches

www.sec.gov

Well known to the SEC/FINRA: WHO were the customers?

Who were the executing BD/MM's? MORE SEC "penny stock trading fairies" of course. NOPE: NITE.

WHY are all entities once again UN Named?

[Robert_Eide.pdf \(finra.org\)](#)

FINANCIAL INDUSTRY REGULATORY AUTHORITY OFFICE OF HEARING OFFICERS - FINRA.org

FINANCIAL INDUSTRY REGULATORY AUTHORITY OFFICE OF HEARING OFFICERS DISCIPLINARY PROCEEDING NO. 2011026386002 HEARING OFFICER: MJD ORDER ACCEPTING OFFER OF SETTLEMENT August 3, 2015 INTRODUCTION Disciplinary Proceeding No. 2011026386002 was filed on October 21, 2014, by the

www.finra.org

Orders Accepting Offers of Settlement - Aegis Capital Corp., Charles Smulevitz, Kevin McKenna (finra.org)

Complainant, Hearing Officer Rochelle S. Hall Department of Enforcement, Disciplinary Proceeding ORDER ACCEPTING OFFER OF OFFICE OF HEARING OFFICERS INDUSTRY REGULATORY AUTHORITY FINANCIAL Aegis Capital Corp. SETTLEMENT Date: August 3, 2015 Respondents. INTRODUCTION - FINRA.org

another F11"4RA member and registered with FINRA, through the firm, in several capacities, including as a GSR and GSP. Under Article V of the FINRA By-Laws, FINRA possesses

www.finra.org

Kevin McKenna and Robert Eide (sec.gov)

Kevin McKenna and Robert Eide - SEC.gov | HOME

3 As a result of the foregoing, McKenna willfully 2 aided and abetted and caused Aegis' violations of Exchange Act Section 17(a) and Rule 17a-8 thereunder and Eide was a cause of Aegis' violations.

www.sec.gov

Stetson: Honig side kick. Therapix now SciSparc. Still Israel
Beginning on pg 10 of the SciSparc SEC approved and reviewed registration

https://www.sec.gov/Archives/edgar/data/1611746/000121390021022427/ea139707-f1_scisparcltd.htm#a_009

www.sec.gov

20 Raul Wallenberg Street, Tower A, Tel Aviv 6971916, Israel. Tel: (+972) (3) 610-3100 : Puglisi & Associates.
850 Library Ave., Suite 204. Newark, DE 19711

www.sec.gov

Sellers include:

Aegis CEO Robert Eide Pension Plan: NOW that is f'n funny

Hoboken restraunteur Rohit Bawa

[NYC Restaurateur Revamping Former Liberty Bar Site | Jersey Digs](#)



NYC Restaurateur Revamping Former Liberty Bar Site | Jersey Digs

The building itself was designed by Minervini Vandermark and will be four stories of concrete construction. The residential component will consist of three separate 3-bedroom, 2-bathroom units, each occupying one floor.

jerseydigs.com

Connecticut distributor Michael Bozzuto

[Contact | Bozzutos.com](#)

Contact | Bozzutos.com

Connect With One of Our Teams. We value your feedback. Let us know what's on your mind and how we can serve you better. Please select a department on the left to send a message directly to the team you would like to reach.

www.bozzutos.com

and, prolific Bag Man Michael Bigger

Bigger Capital

[EDGAR Search Results \(sec.gov\)](#)

AND many more

More on New York based Bigger Capital coming

Of course, Aegis has a BOOMING wealth Management business

How many related party transactions in this SEC reviewed Therapix F1?

https://www.sec.gov/Archives/edgar/data/1611746/000121390016017994/ff12016_therapixbio.htm#a_017

Next up: SciSparc

Aegis "Investment banking" has ties to Israeli military

Isaac Livni-EIDE: related?

[Investment Banking Team - Aegis Capital Corp. \(aegiscapcorp.com\)](#)

Aegis just did an SEC approved offering for Meten EdtechX Education Group

China

[EDGAR Search Results \(sec.gov\)](#)

Brought to the US public/NASDAQ by the same Bag Man who brought Hwang/Archegos money laundering shell
GSX to the US/NASDAQ

Puglisi and Associates:Delaware

https://www.sec.gov/Archives/edgar/data/1796514/000121390020018525/ea124386-f1_metenedtech.htm

[Form F-1 \(sec.gov\)](#)

Some reports I've read suggest the SEC won't investigate Archegos/Hwang because it lacks "jurisdiction".

Perhaps Ms Hodgman/Strzok can clarify for us.

Recall: Honig,Stetson/Frost/Alpha Cap (my TCR). As I REPEATEDLY told the SEC: multi BILLIONAIRE Frost didn't
risk it all to make a few million. He/they were laundering

8 (EIGHT) YEARS after submitting my NITE/UBS TCR with the SEC, Alpha Capital Anstalt is very much up and
running in 2021

[EDGAR Search Results \(sec.gov\)](#)

For His part: Frost bought Ladenberg from Icahn/Lorber/ et al: Vector/New Valley AFTER Ladenberg had bought
Icahn's former firm Gruntal. Gruntal: SAC,Sater,Feinberg, Icahn: MILKEN

Archegos and Greensill: Credit Suisse.

Credit Suisse is controlled by Milken flunkies. Including the Risk Officer who quietly stepped down.

Greensill: Jim Justice: Magna/Sason/Saviola/Sichenzia: SDNY/NY Supreme Court

I suspect there will be no SEC investigation of Credit Suisse. Ms Hodgman Strzok is an expert at criminal
obstruction.

Pretty good, eh?

It's a gift really

Cheers!

Christopher J Dilorio

Whistleblower Extraordinaire

[REDACTED]

From: Chris Dilorio <[REDACTED]>

Sent: Monday, May 24, 2021 5:47 AM

[REDACTED]

Subject: Fw: Formal appeal for denial covered action 2015-016/ Knight Capital TCR & Appendix

Judge Engelmayer:

Simply put: RIOT exists in SEC filings only. Multiple Honig money laundering shells: Aspenbio/Venaxis/Bioptix involving Russian Government entity: Rusnano

RIOT world HQ in Castle Rock is 15 minutes from my home. Apparently Mr Gottschall can't seem to find Castle Rock on a map. There is no RIOT at SEC filing address.

An ISP: Clear Connect and a Pakistani BPO entity: NASDAQ traded IBEX.

Who did Mr Gottschall deliver his "no further investigation" letter to exactly? It sure as hell wasn't RIOT.

BTW: as a result of said Gottschall letter/determination as result of his incredibly THOROUGH investigation, the SEC chose not to review a RIOT offering in December 2020

[Riot Blockchain, Inc. S-3 Letter.pdf \(sec.gov\)](#)

UNITED STATES SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549 DIVISION OF CORPORATION FINANCE -
SEC.gov

United States securities and exchange commission logo December 11, 2020 Jeffrey McGonegal Chief
Executive Officer Riot Blockchain, Inc. 202 6th Street, Suite 401

www.sec.gov

and resulted in Susquehanna/CVI pump and dump

[EDGAR Filing Documents for 0001104659-21-023563 \(sec.gov\)](#)

EDGAR Filing Documents for 0001104659-21-023563

Riot Blockchain, Inc. (Subject) CIK: 0001167419 (see all company filings) IRS No.: 841553387 | State of
Incorp.:NV | Fiscal Year End: 1231 Type: SC 13G | Act: 34 ...

www.sec.gov

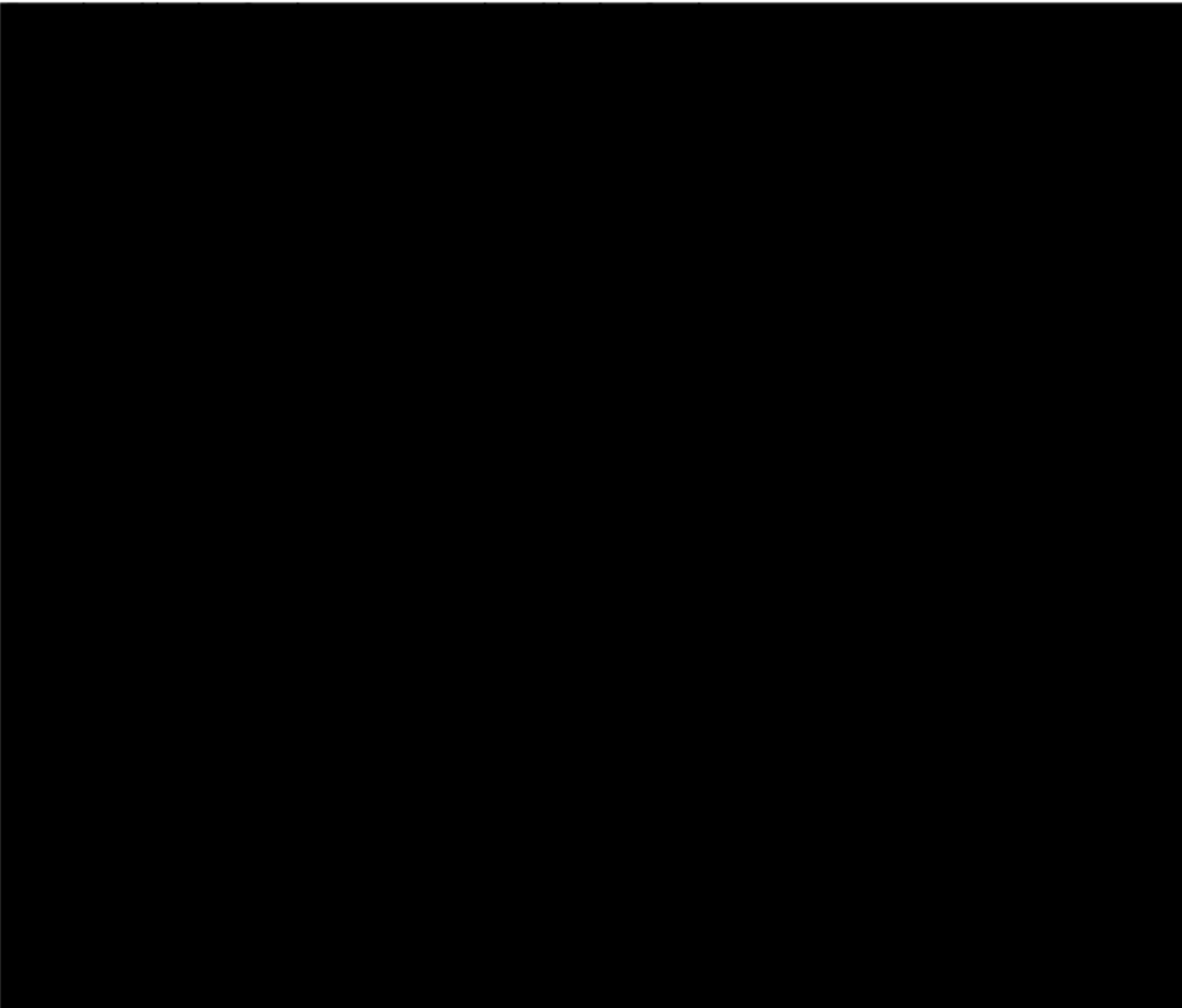
Judge Engelmayer, other SDNY/NY Supreme Court Judges: I implore you to send me a subpoena

Cheers!

Chris

From: Chris Dilorio <[REDACTED]>

Sent: Tuesday, May 18, 2021 6:07 AM



[REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>

Subject: Fw: Formal appeal for denial covered action 2015-016/ Knight Capital TCR & Appendix

Well well well. Mr Gottschall ended his "thorough investigation" into RIOT/Honig et al on 1/29/2020
[Riot Blockchain SEC Ends Investigation Letter 1.29.20 | U.S. Securities And Exchange Commission | Common Law \(scribd.com\)](#)



Riot Blockchain SEC Ends Investigation Letter 1.29.20 | U.S. Securities And Exchange Commission | Common Law | Free 30-day Trial | Scribd

Riot Blockchain SEC Ends Investigation Letter 1.29.20 - Free download as PDF File (.pdf), Text File (.txt) or read online for free. Included a letter from the Denver office of the SEC telling Riot Blockchain that the investigation by the securities regulator is over and at this time no enforcement action is recommended.

www.scribd.com

without EVER visiting the RIOT world HQ in Castle Rock. SHOCKING!

Curious Mr Gottschall: who recieved/signed for your "termination of investigation" into RIOT: The ISP ClearConnect or the Pakistani BPO entity IBEX?

Judge Ramos, other SDNY judges, NY Supreme Court, and NJ Judge Quraishi: you have been played for fools once again by the grossly corrupt SEC. ALL of your courts have jurisdiction over the SEC NY.

Let's give NJ Judge Quraishi a primer on prolific Bag Man Barry Honig shall we?

As detailed by me in my extensive correspondence: the record.

ANOTHER Honig money laundering shell: Inergetics fka Millenium Biotech

[EDGAR Search Results \(sec.gov\)](#)

Based in Newark NJ

Is everyone familiar with Healthcare fraud felon Brian Colleran?

[Three Companies and Their Executives Pay \\$19.5 Million to Resolve False Claims Act Allegations Pertaining to Rehabilitation Therapy and Hospice Services | OPA | Department of Justice](#)



Three Companies and Their Executives Pay \$19.5 Million to Resolve False Claims Act Allegations Pertaining to Rehabilitation Therapy and Hospice Services | OPA | Department of Justice

Ohio based Foundations Health Solutions Inc. (FHS), Olympia Therapy Inc. (Olympia), and Tridia Hospice Care Inc. (Tridia), and their executives, Brian Colleran (Colleran) and Daniel Parker (Parker), have agreed to pay approximately \$19.5 million to resolve allegations pertaining to the submission of false claims for medically unnecessary rehabilitation therapy and hospice

www.justice.gov

Somehow, the DoJ didn't believe this was a criminal case. The "prosecutor" on the case was Chad Readler. Now: JUDGE Chad Readler. Made so by Trump.

Colleran entered into a fraud \$20 million purchase order with Millenium Biotech in 2007

[Millennium Biotechnologies, Inc. Signs Five Year \\$20,000,000 Purchase Agreement with Provider Services Inc. | BioSpace](#)

Millennium Biotechnologies, Inc. Signs Five Year \$20,000,000 Purchase Agreement with Provider Services Inc. - BioSpace

Millennium Biotechnologies, Inc. Signs Five Year \$20,000,000 Purchase Agreement with Provider Services Inc. - read this article along with other careers information, tips and advice on BioSpace

www.biospace.com

Colleran then became a large shareholder in Millenium

[EDGAR Filing Documents for 0001144204-08-023159 \(sec.gov\)](#)

Guess who controlled the money laundering shell Millenium/Inergetics?

Prolific Bag Man Barry Honig

[EDGAR Filing Documents for 0001144204-10-011488 \(sec.gov\)](#)

But, it gets better still: Somehow, some way Prolific Bag Man Josh Sason/Hanover/Magna: MULTIPLE TCR's filed by me and a massive SEC fraud on the SDNY and NY Supreme Courts: NewLead/FreeSeas et al: showed up as a very large holder of Millenium successor Inergetics

[EDGAR Filing Documents for 0001144204-15-034843 \(sec.gov\)](#)

https://www.sec.gov/Archives/edgar/data/72170/000114420414046310/v385056_s1.htm#s1_007

The SEC revoked the Inergetics/Millenium registration only AFTER this massive fraud on the public was committed

I can't seem to find any reference to this money laundering shell in the DoJ/Readler CIVIL not criminal complaint. You won't find any SEC complaint implicating Colleran/ Honig /Sason either

Millenium/Inergetics: New Jersey: SEC NY

OTHER Sason entities list offices at 40 Wall Street: Trump

So, Judge Ramos: HOW did prolific Bag Man Honig become involved in the Honig money laundering shell MGT Capital which ALSO did a "pivot" to crypto mining?

[EDGAR Search Results \(sec.gov\)](#)

Venaxis/Aspenbio/Bioptix: now RIOT. Which only exists in SEC filings. Thanks in large part to the well orchestrated SEC NY/ SEC Denver criminal obstruction/corruption.

[EDGAR Filing Documents for 0001493152-16-013083 \(sec.gov\)](#)

That was 1 thorough "investigation Mr Gottschall. I see great things at the SEC for you

AND guess who ELSE was involved in MGT in 2019 just before the SEC revoked the registration:
Chicago Bag Man Fife/Iliad
6 years after I filed my TCR with the grossly corrupt SEC
[EDGAR Filing Documents for 0001567619-19-008772 \(sec.gov\)](https://www.sec.gov/Archives/edgar/data/1001567619-19-008772/sec.gov)

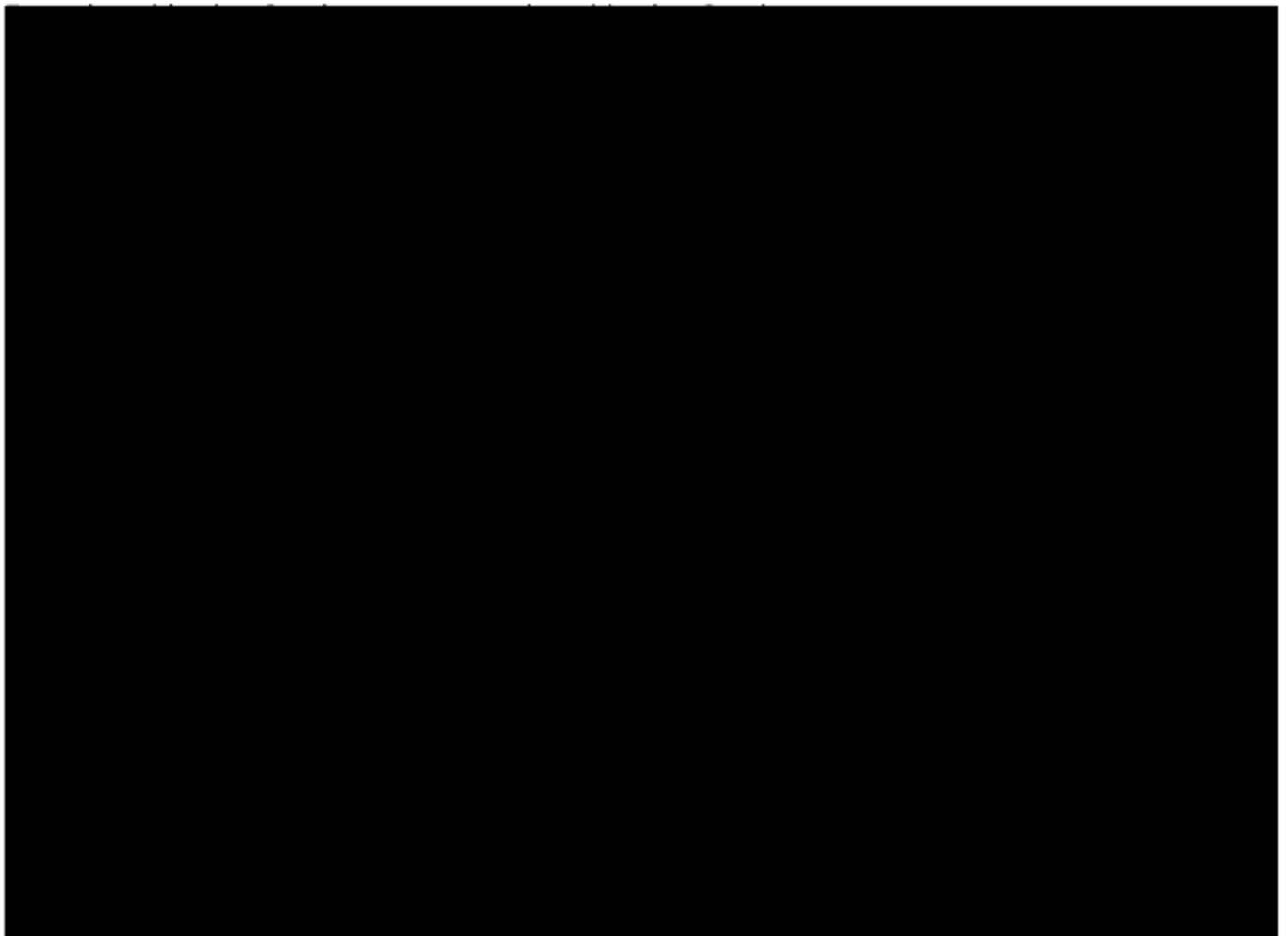
AND the Scumbags at Sichenzia Ross: MULTIPLE frauds on SDNY/NY Supreme Courts with Sason et al
https://www.sec.gov/Archives/edgar/data/1001601/000114420415063432/v423506_s-1.htm

The interconnectedness of my claims on display yet again. OR: The record

to be continued.....

Cheers!
Chris

From: Chris Dilorio <[REDACTED]>
Sent: Monday, May 17, 2021 5:28 AM



Subject: Fw: Formal appeal for denial covered action 2015-016/ Knight Capital TCR & Appendix

Oh,
But it gets MUCH better Mr Gottschall et al:
Ibex Digital [REDACTED]
Bermuda based/Pakistani controlled Ibex Ltd
NASDAQ: IBEX
[EDGAR Search Results \(sec.gov\)](#)

60+% controlled by Pakistani entities: The Resource Group: TRGI
and TRG Pakistan Ltd: TRGP

BPO takes on a WHOLE different meaning.
Which explains the co location with Local ISP ClearConnect.
Riot Blockchain is just a front.
RIOT crypto mining contract with Massena NY Coinmint
[New York Crypto Mining Farm Coinmint Set to Dissolve? - MinerUpdate](#)



[New York Crypto Mining Farm Coinmint Set to Dissolve? - MinerUpdate](#)

An ongoing dispute between the two partners who hold equal shares in multi-cryptocurrency mining company Coinmint has resulted in one of the partners filing to dissolve the company.

www.minerupdate.com

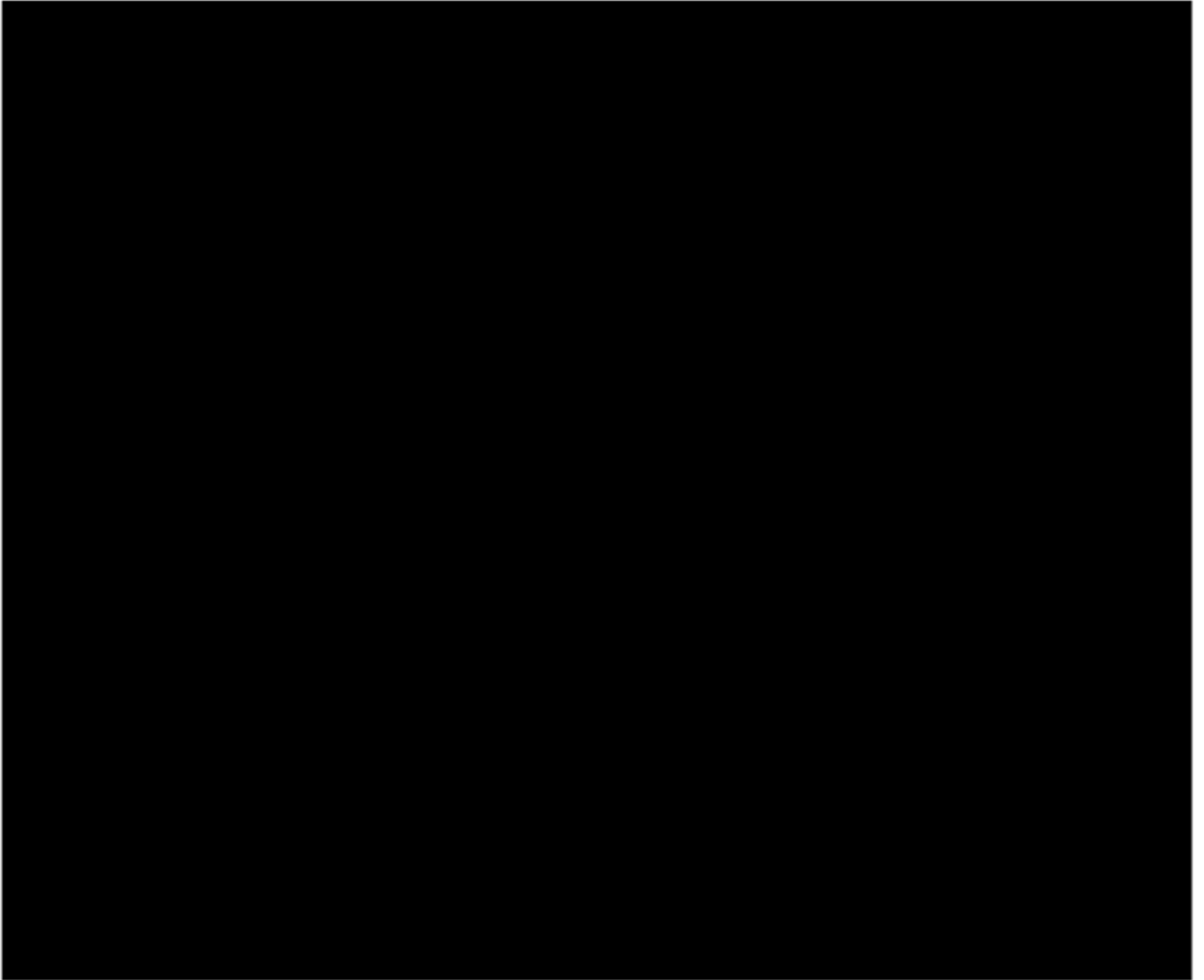
is on verge of dissolution
RIOT/Aspenbio/Bioptix/Venaxis is and always has been a Prolific Bag Man Honig money laundering shell.
Because: say it with me: the only difference between a NASDAQ money laundering shell and an OTCM money laundering shell is the amount being laundered.

I've read that somewhere before. Hey, I'm the 1 who said it.
Give me a call Mr Gottschall. After I help you find Castle Rock on a map, I'll walk you through it. I'll type/talk slowly for you. Because, if you can't find Castle Rock on a map you don't have a chance in hell of finding Pakistan on a map. And, after you're able to find Castle Rock on a map, I'll take you to Vista Gold :VGZ "world HQ" at [REDACTED] Littleton CO
The money laundering shell cited in my TCR and kept up and running by the grossly corrupt SEC for the last 8+ years and with SEC approved offering after offering.

Cheers!
Chris
[REDACTED]

From: Chris Dilorio <[REDACTED]>

Sent: Friday, May 14, 2021 6:34 AM



Subject: Fw: Formal appeal for denial covered action 2015-016/ Knight Capital TCR & Appendix

In addition to NeoPhotonix and Bioptix

[BiOptix Diagnostics, Inc. - Portfolio company - RUSNANO Group](#)



BiOptix Diagnostics, Inc. - Portfolio company - RUSNANO Group

RUSNANO was founded in March 2011 as an open joint stock company through reorganization of state corporation Russian Corporation of Nanotechnologies. RUSNANO's mission is to develop the Russian nanotechnology industry through co-investment in nanotechnology projects with substantial economic

en.rusnano.com

Rusanano/Akhanov invested in Quantenna

Now On Semiconductor which supplies chips to Apple

[EDGAR Filing Documents for 0001628280-17-001249 \(sec.gov\)](#)

as well as chip company Aquantia

[EDGAR Filing Documents for 0001387131-18-000659 \(sec.gov\)](#)

Aquantia was acquired by giant chip company Marvell

[Company - Newsroom - Marvell Completes Acquisition of Aquantia - Marvell](#)



Company - Newsroom - Marvell Completes Acquisition of Aquantia - Marvell

Marvell Completes Acquisition of Aquantia Accelerating Multi-Gig Ethernet Technology Leadership. Santa Clara, California (September 19, 2019) – Marvell (NASDAQ: MRVL) today announced that it has completed its acquisition of Aquantia, Corp. (NYSE: AQ).. Aquantia pioneered Multi-Gig technology –

www.marvell.com

The SEC massive frauds on the SDNY and NY Supreme Courts continues

Sichenzia Ross: Sason/Crede/ Jim Justice et al NewLead and FreaSeas

As well as WNW and others.

Now RiotBlockchain.

So, Sichenzia facilitated a fraud "acquisition" of certain Futures Commission Broker now Introducing Broker trading platform from Mark B Fisher of "Miami"

https://www.sec.gov/Archives/edgar/data/1167419/000107997318000207/riot_8k-03272018.htm

SEC.gov | HOME

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

www.sec.gov

Mark B Fisher has owned MBF Clearing
[MBF Clearing Corp.\(mbfcc.com\)](http://mbfcc.com)

MBF Clearing Corp.

Welcome to MBF Clearing Corp website About MBF Clearing Corp Founded in 1987, MBF Clearing Corp. is widely-recognized for our preeminent role within the global futures markets.

www.mbfcc.com

As well as MBF Capital
[mbf online | management \(mbfcapital.com\)](http://mbfcapital.com)

mbf online | management

Mark Fisher is the President of MBF Capital Corporation, Inc. He is a founder of Vela Pharmaceuticals, Inc., ExSAR Corporation, and Kimeragen, Inc., which merged into Valigen, Inc. Prior to the formation of MBF, Mr. Fisher was a Principal of Alex Brown where he was employed from 1990-1996.

www.mbfcapital.com

for quite some time. BOTH New York based.

Not even sure if there is a Miami Office for either Fisher entities. So WHY "Miami"?

Part of that question can be answered by ANYONE receiving my extensive and irrefutable evidence of SEC criminal obstruction and corruption:

Miami SEC Director Eric Bustilloe. A grossly corrupt Piece of Shit on par with Gottschall and Best. Did Fisher have outside investors in his firms based in Miami?

MBF /Fisher CLEARLY fall under SDNY/NY Supreme Courts jurisdiction. As does Sichenzia Ross

As I have said repeatedly: the national security implications of these massive, multiple SEC facilitated frauds are staggering.

Cheers!
Chris

From: Chris Dilorio <[REDACTED]>

Sent: Thursday, May 13, 2021 9:49 AM



Subject: Fw: Formal appeal for denial covered action 2015-016/ Knight Capital TCR & Appendix

"Mr Dilorio, do you have any MORE irrefutable evidence of SEC gross criminal obstruction and corruption while screwing you the whistleblower who caught them?"

Yes SDNY/NY Supreme Courts, SEC IG Hoecker, [REDACTED], FBI, IRS CI etc etc etc: It just so happens I took a field trip to try and find the longstanding address of the Castle Rock CO money laundering shell

Riot Blockchain fka Aspen Bio, Venaxis, Bioptix

[EDGAR Search Results \(sec.gov\)](#)

Enlightening! Kept up and running by the grossly corrupt SEC and pumped by Najarian(NetElement) on CNBC, Riot Blockchain is a Honig/Grousman/Stetson/GRQ et al money laundering shell which somehow escaped (along with many others) the SEC scrutiny in its Honig/Stetson/Frost/Jaclyn/Alpha Cap et al complaint

https://www.sec.gov/Archives/edgar/data/1167419/000107997317000238/bioptix_s3.htm

But WAIT. There's MORE!

The Honig/Stetson Bioptix money laundering shell is ALSO a Colorado entity: Boulder

[EDGAR Search Results \(sec.gov\)](#)

Bioptix was just a vehicle to get Honig/Stetson et al into RIOT. Gee, I wonder what they saw in Bioptix that caused them to "invest" when it was around less than 2 years before "pivoting" to blockchain/crypto????

I have an idea!

let's ask the scumbags at Sichenzia Ross who advised on the Bioptix money laundering offering which gave Honig et al ownership in RIOT

<https://www.sec.gov/Archives/edgar/data/1167419/000107997317000154/ex10x5.htm>

SEC

WHEREAS, subject to the terms and conditions set forth in this Agreement and pursuant to Section 4(a)(2) of the Securities Act of 1933, as amended (the "Securities Act"), and Rule 506 promulgated thereunder, the Company desires to issue and sell to each Purchaser, and each Purchaser, severally and not jointly, desires to purchase from the Company, securities of the Company as more fully ...

www.sec.gov

Then, we can ask the Bioptix offering Escrow agent: New York licensed Signature Bank:SBNY. You know the 1: the once and always Private Banking arm of Hapoalim where Strauss/Berman criminally obstructed a thorough investigation of Hapoalim tax evasion and money laundering. The same SBNY which boasted Ivanka Trump as a Board member and was a "go to lender" for Trump/Kushner and where ALL SEC filings have disappeared. AND where Chairman Scott Shay is on BoD of CardWorks (Berman) which was go to processor for Net Element: Merrick Bank UT. Etc etc etc. YES, that SBNY

<https://www.sec.gov/Archives/edgar/data/1167419/000107997317000154/ex10x3.htm>

SEC.gov | HOME

WHEREAS, pursuant to the terms of the Purchase Agreement the Company desires to sell (the "Offering") a minimum of \$2,000,000 (the "Minimum Amount") and a maximum of \$2,250,000 (the "Maximum Amount") of units of its securities (the "Units"). Each Unit is being sold at a price of \$2.50 per Unit. Each Unit consists of one (1) share of the Company's common stock, no par value per share (the ...

www.sec.gov

How much SEC et al criminal obstruction and corruption are we up to so far Mr Gottschall et al?

Wait, there's more!

In 2015, just prior to Honig/Stetson/SBNY/Sichenzia et al fraud offering, Boulder Based Bioptix FKA Alphasniffer did an SEC approved D offering

[SEC FORM D/A](#)

SEC FORM D/A

In submitting this notice, each issuer named above is: Notifying the SEC and/or each State in which this notice is filed of the offering of securities described and undertaking to furnish them, upon written request, in the accordance with applicable law, the information furnished to offerees.*

www.sec.gov

Guess who shows up as A Bioptix/Alphasniffer insider?

Dimitry Akhanov

WTAF is Rusnano USA????? AND head of the Russian Federal Energy Agency????

WHY is he involved in Bioptix now RIOT???

[Dimitry Akhanov, CEO of Rusnano USA, Inc., RUSNANO \(topionetworks.com\)](http://www.topionetworks.com)

Dimitry Akhanov, CEO of Rusnano USA, Inc., RUSNANO

Curated profile of Dimitry Akhanov, CEO of Rusnano USA, Inc., RUSNANO

www.topionetworks.com

Akhanov is also involved in NYSE listed Neophotonics

[NeoPhotonics Names Dimitry Akhanov to Board of Directors President and CEO of Rusnano USA Joins NeoPhotonics Board | NeoPhotonics Corporation](#)

[EDGAR Search Results \(sec.gov\)](#)

Neophotonics supplies optical chips to some of the biggest optical switching companies in the world like US based Cisco and Ciena

Recall: Honig/Stetson/Frost/Alpha Cap

Alpha Cap: my 2013 TCR

Honig/Stetson: Jaclin: Farkas: BLNK. Also CFO New: NETE: Crede/SBNY/CardWorks/ESQ etc

Honig also Trump fundraiser: Cleveland: Colleran. DoJ "prosecutor" on Colleran massive healthcare fraud: Chad Readler. Trump made Readler a Federal judge.

SEC left dozens of Jaclin money laundering shells up and running. Including Blink/New Image Concepts, Intercloud with Sason etc. As well as OZ/Maso/Sculptor NJ deli Hometown International: HWIN. NONE of this is by accident. SEC gross criminal obstruction and corruption.

Now Honig/Stetson: Bioptix now crypto RIOT.

Right here. 15 minutes from my home. Like CGFIA and VGZ. As well as prolific shell CPA firm BF Borgers.

Give me a call Mr Gottschall. I'll point out Castle Rock to you on a map you grossly corrupt piece of shit!

Cheers!

Chris

From: Chris Dilorio <[REDACTED]>

Sent: Sunday, May 9, 2021 5:06 PM

[REDACTED]

[REDACTED] <[REDACTED]>;

EFTA00039710

Subject: Fw: Formal appeal for denial covered action 2015-016/ Knight Capital TCR & Appendix

Per below:

Judge Cote's sentencing of Dan Kamensky is a gross miscarriage of justice. The SDNY, NY Supreme Court, [REDACTED], Mr Kamensky's counsel, FBI, other DoJ attorneys are in possession of information which clearly indicates a long standing and grossly corrupt relationship between the SEC and Handler/Jefferies. Further, as is material in the "ongoing" Joshua Sason investigations of massive fraud committed on the SDNY/NY Supreme Courts and directly related to my multiple claims: AQR and Sason: MI Acquisition with known felon Tom Priore: ICP: also SDNY and now a direct lending client of Ares Management: Ressler: Drexel with Handler: also Neiman Marcus. In short: Handler/Ressler set up Mr Kamensky for fucking with their deal. Had Kamensky won his bid, Ares/Ressler would have been left with a much less valuable asset. AND put them further under water.

[AresNeiman.pdf \(pecloserlook.org\)](#)

Sticker Shock: Can Ares Management Sell Neiman Marcus?

2 Ares' Neiman Marcus Gamble In September 2013, Ares Management purchased luxury retailer Neiman Marcus in a joint venture of Ares Corporate Opportunities Funds III and IV and the Canadian Pension Plan Investment

www.pecloserlook.org

The SDNY Courts had this information. Kamensky's counsel had this information. Judge Cote should have declared a mistrial rather than sentence Kamensky. A gross miscarriage of justice.

Now, let's turn to another example where the grossly corrupt SEC is ACTIVELY facilitating multiple frauds on the investing public while screwing the whistleblower who caught them: ME.

Recall ANOTHER completely fraudulent denial of award : UBS AML. Where Norberg/OWB invoked the ILLEGALLY enacted Summary Disposition Rule aka Christopher J Dilorio rule. Where the SEC own SEC website clearly states: ALL tips received are THOROUGHLY reviewed by Enforcement Staff. Meaning: The Summary Disposition Rule: SEC Staff never saw the information: is a KNOWN fraud.

Follow up for Mr Searles/Banerjee et al: SEC LA where multiple frauds left up and running. Ares also LA and NY. Milken: Beverly Hills

Recall: UBS San Diego: K2. Where FINRA, FINCEN, and the SEC all confirmed UBS cross border business was never shut down per the terms of the DoJ dropping it's DPA in 2010. Further, clearly obstructed by SEC IG Hoecker when I filed a complaint with his office in 2015 after receiving another denial for Award related to the UBS Reg Sho complaint. ALSO according to the SEC OWB FAQ: Enforcement staff notifies investigating staff of related tips received AND Whistleblowers are ALSO entitled to awards based on new lines of inquiry. The Mckessy/Norberg/Hoecker criminal obstruction led to the UBS cross border business never being shut down. The UBS AML complaint acknowledges this irrefutable fact.

UBS K2: NO individuals were censured/fined by SEC/FINRA. ALL correspondence to UBS Weehawken. SEC LA:Searles/Banerjee et al had ZERO jurisdiction.

Searles: Anton Chia and related fraud and money laundering. As I have also irrefutably proven: MULTIPLE frauds Up and running today.

It is no coincidence the SEC LA/ UBS San Diego multiple money laundering frauds. Searles et al are PROTECTING UBS San Diego. That's why none of these frauds have been shut down. The UBS cross border business is very much up and running TODAY

MORE....

Who is San Diego resident Jason Sunstein? CFO of several Once/still SEC reporting money laundering shells trading OTCM Pinks and no doubt well known to Searles,Banerjee et al in SEC LA.

Viper Networks fka

Tinglefoot Mining

Baja Pacific International

Taig Ventures

[EDGAR Search Results \(sec.gov\)](#)

[Microsoft Word - VPER - OTC PinkGuidelines Annual 12.31.20\(Feb21 vers\)v.3_nowcfo changes - Apollo Smart Lights-3.docx \(otcmkt.com\)](#)

VPER - OTC PinkGuidelines Annual 12.31.20(Feb21 vers)v.3 nowcfo changes
- Apollo Smart Lights-3

27& 0dunhwv *urxs ,qf 27& 3lqn %dvlf 'lvforvxuh *xlgholqhv y)heuxdu\ 3djh ri ,i wklv lvvxhu ru dq\ ri lwv
suhghfhvruv kdyh ehqk wkh vxemhfw ri vxfk surfhghglqv sohduh surylgh dgglwlrqdo ghwdlov lq wkh

Santeon Group

fka Air-Q

Air Rover

Covenant Financial

Homegate Corp

Spartan Oil

ubroadcast

[EDGAR Search Results \(sec.gov\)](#)

Santeon and Viper: African/Egyptian entities/Individuals

Santeon CEO : Ashraf Rofail

International Land Alliance

[EDGAR Search Results \(sec.gov\)](#)

A San Diego virtual office well known to the SEC in its correspondence

[Virtual Office in DiamondView Tower | Regus RU](#)

Virtual Office in DiamondView Tower | Regus RU

Renting a Virtual Office in DiamondView Tower is affordable and easy. Choose a virtual office option and pay one simple price. Get a quote today.

www.regus.ru

[filename1.pdf \(sec.gov\)](#)

[filename1.pdf \(sec.gov\)](#)

International Land Alliance

[EDGAR Search Results \(sec.gov\)](#)

A little California pot

a little "Mexico vacation properties"

[Mexico Vacation Property Investment | Baja Mexico Real Estate Investment | International Land Alliance \(ila.company\)](#)



Mexico Vacation Property Investment | Baja Mexico Real Estate Investment - Baja Mexico Real Estate Investment | International Land Alliance

International Land Alliance is a Mexico vacation property investment firm based in San Diego, California. The company was formed for the purpose of developing and selling residential communities for home buyers, vacation/second home, retirement, and investors.

ila.company

As of 2017, ILA is a Wyoming LLC

[SEC FORM D](#)

SEC FORM D

In submitting this notice, each issuer named above is: Notifying the SEC and/or each State in which this notice is filed of the offering of securities described and undertaking to furnish them, upon written request, in the accordance with applicable law, the information furnished to offerees.*

www.sec.gov

Of course: as has been well documented by ME: ILA currency of choice for these "beautiful Mexico land ventures" is common stock.

In April 2021

[International Land Alliance Inc. \(Form: 8-K, Received: 04/05/2021 14:00:05\) \(otcm Markets.com\)](#)

OMID Holdings

fka New York Based Av1 Group

[content \(otcm Markets.com\)](#)

Disclosure Statement Pursuant to the Pink Basic Disclosure Guidelines - OTC Markets Group

OTC Markets Group Inc. OTC Pink Basic Disclosure Guidelines (v2.1 December 2019) Page 1 of 23 .
Disclosure Statement Pursuant to the Pink Basic Disclosure Guidelines

backend.otcm Markets.com

Back in 2010, AV1 Group New York was controlled by a Moussa Traore

[SEC FORM D](#)

Who happens to have the same name as former Mali Dictator.

Of Course, Jason Sunstein ONLY experience on Linked In is his ILA tenure. ALL of these other ventures have been omitted. Gee, I wonder why.

[Jason Sunstein - Co-Founder and Vice President - International Land Alliance, Inc. \(OTCQB: ILAL\) | LinkedIn](#)



Jason Sunstein - Co-Founder and Vice President -
International Land Alliance, Inc. (OTCQB: ILAL) |
[LinkedIn](#)

Jason Sunstein Co-Founder and Vice President at International Land Alliance,
Inc. San Diego, California 500+ connections

www.linkedin.com

Mr Searles, Banerjee, SEC LA have been criminally obstructing a REAL investigation into Sunstein et al. Right there in San Diego/UBS K2 back yard. So: No individual UBS San Diego K2 complaints, multiple money laundering shells up and running.

For MANY reasons IG Hoecker: ALL SEC OWB Denials of my award applications are complete fraud. ALL of the activity continues TODAY as a direct result of your criminal obstruction and corruption.

AND: NITE and CDEL trading all of them.

In furtherance of the conspiracy.....

Cheers!

Chris

From: Chris Dilorio <[REDACTED]>

Sent: Friday, May 7, 2021 4:01 PM

[REDACTED]
[REDACTED] <[REDACTED]>
Subject: Fw: Formal appeal for denial covered action 2015-016/ Knight Capital TCR & Appendix

Judge Cote,

Your 6 month prison sentence for Dan Kamensky is a gross miscarriage of justice. Your Courts, Ms Strauss, and Mr Kamensky's counsel are in possession of information that clearly indicates a long standing and corrupt relationship between the SEC and Handler/Jefferies. Kamensky was set up. I will be contacting Mr Kamensky directly as his counsel has committed gross negligence in his representation.

Chris

From: Chris Dilorio <[REDACTED]>

Sent: Friday, May 7, 2021 6:28 AM

Subject: Fw: Formal appeal for denial covered action 2015-016/ Knight Capital TCR & Appendix

SDNY/NY Supreme Court Judges et al:

The interconnectedness of my claims on display AGAIN

Per my 2013 TCR criminally obstructed by McKessy/Norberg et al: WHY do \$50 billion Swiss banks trade OTCM Pink penny and fractional penny stocks? The record is irrefutable: FINRA/SEC/FINCEN using my information: these publicly traded shells are the perfect money laundering vehicle. Absolutely IRREFUTABLE. WHY do firms like NITE and CDEL trade the same OTCM Pink shells? Abusive, illegal naked shorting to facilitate this illegal activity. Virtually riskless. VERY profitable. NONE of this happens without a willing executing criminal BD like NITE converting worthless certs to real money and dumped on the investing public the SEC is MANDATED to protect. ACTIVELY facilitated and perpetuated by the grossly corrupt SEC: reverse splits, no CAT, Obligation Warehouse: circumvent close outs of Rule 204, rarely revoked registrations, outsourcing the entire OTCM to the BD SRO FINRA, etc etc etc. I made the link between the money laundering and the illegal, abusive naked shorting. This is and always has been the core business at Knight/KCG/VIRT:NITE. ALL money laundering can be reverse engineered from the executing BD/MM level. The cash register.

What we are seeing in GME is a rounding error compared to the fails and illegal naked shorting in the OTCM.

As I have also repeatedly said: the only difference between a money laundering OTCM Pink shell and a NASDAQ SPAC is the amount of money being laundered. Also on display real time as I have detailed. As with Swiss banks and penny/fractional penny stocks: WHY do giant Quant Hedge Funds like AQR facilitate so many fraud blank check shell transactions? CERTAINLY does not fit the investment thesis of a firm run by Phd's.

WHY does giant PE/Real Estate firm Apollo play Fisker SPAC? WHY did Goldman,JPM,Jefferies et al bail out NITE more than once? WHY has the SEC repeatedly bailed out criminal NITE?

The most recent Earnings call for NITE was remarkable: SELL SIDE is actually doing what it's supposed to do and questioning NITE/Cifu lack of transparency particularly in the last few years. This has been going on for some time detailed by me and blessed by the SEC. This lack of transparency is designed to conceal from the public the true nature of the core NITE business: illegal, abusive naked shorting OTCM publicly traded shells to facilitate money laundering. Until now, the Sell Side turned a blind eye/ also intentionally misled the public by omitting these share volumes from their models. These share volumes have been the subject of other SEC/FINRA actions. But, somehow NITE has avoided such actions. INEXPLICABLE. The SEC/FINRA have done everything in their power to protect NITE. WHY? Because they bailed out a known criminal entity in 2012 and have been criminally and corruptly covering up this irrefutable fact ever since. As a result: The illegal activity has continued unabated. Then in 1Q2021, the activity hit a level not even dreamt of. It has been a well orchestrated and massive SEC facilitated fraud on the public the SEC is mandated to protect. A key player in this massive fraud is the corrupt SEC IG Carl Hoecker who not only has criminally and corruptly obstructed an investigation of my extremely serious allegations, Hoecker has also criminally obstructed Congress from executing its oversight of the SEC.

These corrupt, criminal, ongoing frauds have also found their way into the SDNY and NY Supreme Courts as I have detailed. Mr Kamensky is most definitely NOT on the SEC/DoJ "Do not investigate list". This can also be observed in real time. Per my correspondence: MI Acquisition: Magna/Sason: 40 Wall St with AQR/"payment processing" and felon Tommy Priore: ICP:SDNY.

There is a straight and direct line between ICP/Priore and the Degenerate Milken flunkie Handler/Jefferies. Where ██████████ Praised the work of the SEC. As I have previously detailed: Ares Management: Neiman Marcus: Tony Ressler: Milken/ Drexel degenerate flunkie has built quite the monstrosity. A little PE. A little Real estate. But the 800lb gorilla at Ares: Credit. Ressler's sister is married to Fat Leon Black. Close knit bunch for sure. Ares:

[EDGAR Search Results \(sec.gov\)](#)

Massive CLO manager/originator. 1 stop shop. Because as I detailed previously: now a direct lender to fraud money laundering entities like Priore/Sason/AQR et al: PRTH.

Because securitization drives the lending and is not a byproduct of sound credit analysis: Junk is junk REAL TIME.

I applaud Chair Waters and her efforts to reign in illegal trading practices detailed in my extensive record. However: non bank lenders like the massive Ares pose a systemic risk to the US financial system. CLO's are a massive fraud on the public developed by the Milken degenerates like the sub prime and S&L's. The SEC actually brought a complaint recently: IIG which described using CLO's as a money laundering vehicle. The Caymans have recently cracked down also. Greensill: Credit Suisse: Milken: is another example of securitization as money laundering vehicle in sub prime factoring: Jim Justice. SBNY is also a securitization fraud: SBA.

Chair Waters and her Committees see the Credit Ratings Agency/SEC fraud I have also detailed.

My Coronavirus/repo virus: CLO correspondence: The SEC corruptly didn't downgrade massive CLO debt in 2020. The result: issuance exploded in 2021. Non bank lenders like Ares as well as Apollo,Jefferies, Ted Virtue etc etc have reaped tens of millions in management fees. Who told the SEC to obstruct the proper role of the

Credit Agencies to downgrade massive CLO's in 2020? Mr Clements knows. His garbage CLO "report" late in 2020 set the stage for the "all clear" to the SEC.

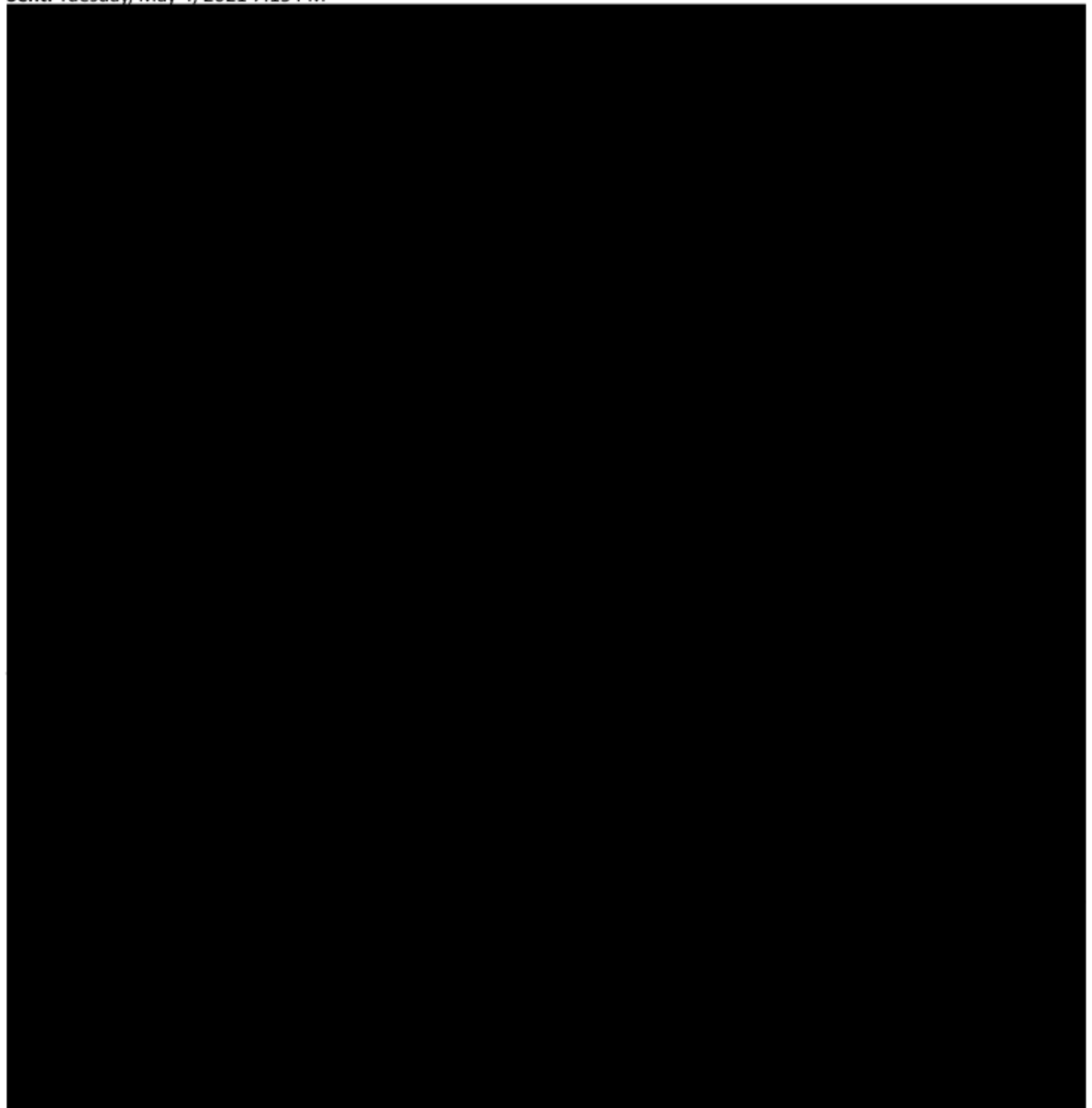
Oh Mr Kamensky! I only hope you sue these corrupt scumbags who ruined your life while they are treated with ZERO implications for their illegal activity by the grossly corrupt SEC/DoJ.

Cheers!

Chris

From: Chris Dilorio <[REDACTED]>

Sent: Tuesday, May 4, 2021 7:15 PM



Subject: Fw: Formal appeal for denial covered action 2015-016/ Knight Capital TCR & Appendix

Mr "Not so Transparent" Dougie Cifu got a little testy on the 1Q2021 earnings call and it abruptly ended. 2 Sell Side Analysts: Fannon/Jefferies and Kramm/UBS pressed @dougielarge on his lack of transparency. What is Dougie Cifu hiding? Something about "what percentage of those 4+ trillion shares of OTCM money laundering shells did NITE trade?" made Dougie squirm like the snake most already know he is. Love the parting shot to Kramm/UBS: "your firm would love to have our business"

[Virtu Financial Inc \(VIRT\) Q1 2021 Earnings Call Transcript | The Motley Fool](#)



Virtu Financial Inc (VIRT) Q1 2021 Earnings Call Transcript | The Motley Fool

Virtu Financial Inc (NASDAQ:VIRT) Q1 2021 Earnings Call May 4, 2021, 8:30 a.m. ET. Contents: Prepared Remarks; Questions and Answers; Call Participants; Prepared Remarks: Operator. Good day, and ...

www.fool.com

I fell off my chair laughing.

Still no questions on the ballooning/insolvent balance sheet. But, hey it's a start.

Ms Mehraban, Mr Williams: your former Paul Weiss colleague Dougie Cifu is feeling some heat. I know you will be gentle with him

Mr Gensler: in case you missed it: Dougie sends his best

Cheers!

Chris

From: Chris Dilorio <[REDACTED]>

Sent: Monday, May 3, 2021 2:03 PM

Subject: Fw: Formal appeal for denial covered action 2015-016/ Knight Capital TCR & Appendix

SDNY/NY Supreme Court Judges.

I once challenge the best and brightest the SEC/DoJ/FBI/IRS CI/FINCEN have to offer. Tear me to shreds. Make an example. I haven't been wrong about 1 single thing. NOT EVEN 1.

The record is simply irrefutable:

The latest edition of "The SEC is a grossly corrupt, criminal organization actively facilitating multiple, massive, ongoing frauds on the public it is mandated to protect to the benefit of the criminals who own them while screwing the whistleblower who caught them: ME"

I refer you to the SEC Office of the Whistleblower FAQ

Of course, I have multiple forms copied should you prefer

[SEC.gov | Office of the Whistleblower](#)

[SEC.gov | Office of the Whistleblower](#)

3. What information can I submit to the SEC? The SEC conducts investigations into possible violations of the federal securities laws. In general, the more specific, credible, and timely a whistleblower tip, the more likely it is that the tip will be forwarded to investigative staff for further follow-up or investigation.

AGAIN AGAIN AGAIN IG Hoecker et al: the "summary disposition" aka Christopher J Dilorio rule corruptly enacted by Norberg/Clayton et al was/is COMPLETE FRAUD

per FAQ #12 from the grossly corrupt SEC/OWB website:

"ALL TIPS, complaints, and referrals received by the SEC are FULLY REVIEWED BY OUR ENFORCEMENT STAFF....."

FURTHER

"Complaints that relate to an EXISTING INVESTIGATION are FORWARDED TO the STAFF WORKING ON THE MATTER."

New line of inquiry.

I don't see how it could be ANY MORE CLEAR IG Hoecker et al.

In addition to annual reports to Congress ACKNOWLEDGING the OWB as the primary contact for whistleblowers to the Commission at large, this is damning. The summary disposition rule aka Christopher J Dilorio Rule: "SEC staff never saw Mr Dilorio's information" is complete and total FRAUD. Designed to use my information to both bring and obstruct thorough investigations while screwing me out of rightful compensation.

IG Hoecker, I'm still looking forward to our first interview given the 3 (THREE) complaints I have filed with your office. The UBS Reg SHO Denial was complete fraud. The UBS FINRA/FINCEN, SEC AML Denial was complete fraud. The Opco Denial was complete fraud. ALL must be reversed. The Summary Disposition Rule/aka Christopher J Dilorio rule must be nullified RETROACTIVE to its passage as it is clearly contrary to the SEC Rules ITSELF.

I look forward to speaking with you Carl

[REDACTED]

Cheers!

Chris

From: Chris Dilorio <[REDACTED]>

Sent: Thursday, April 22, 2021 5:57 AM

To: [REDACTED]

Subject: Fw: Formal appeal for denial covered action 2015-016/ Knight Capital TCR & Appendix

so sorry for incorrect e mail

From: Chris Dilorio <[REDACTED]>

Sent: Thursday, April 22, 2021 5:44 AM

[REDACTED]

Subject: Fw: Formal appeal for denial covered action 2015-016/ Knight Capital TCR & Appendix

Judge Buchwald,

I hope your colleagues in the SDNY and NY Supreme Court have forwarded my information. Like your colleagues, you are the victim of another SEC fraud on the SDNY court. I am an irrefutable expert on SEC criminal obstruction and corruption. Jay Clayton was NEVER "shocked" by the widespread fraud in the OTCM and crypto markets.

[Widespread Fraud in ICOs and Penny Stocks Shocked SEC's Jay Clayton - Bloomberg](#)



Widespread Fraud in ICOs and Penny Stocks Shocked SEC's Jay Clayton - Bloomberg

The former Wall Street deals lawyer who leads the U.S. Securities and Exchange Commission said one of the biggest surprises of his first year heading the agency has been learning about the levels ...

www.bloomberg.com

Clayton's firm Sullivan Cromwell/Jared Fishman/Rodgin Cohen et al are EXPERTS on penny stock fraud having bailed out the criminal enterprise Knight/KCG/VIRT:NITE on more than 1 occasion. OTCM shells and crypto are complimentary money laundering vehicles.

Clayton and the SEC have obstructed a thorough investigation of my very serious allegations for years. Including the 2017 merger of Virtu and KCG: NITE. As a direct result multiple, massive SEC facilitated frauds on the public the SEC is mandated to protect are very much ongoing. In 1Q 2021, more than 4 TRILION shares of OTCM money laundering shells were traded. Money laundering shells like SEC reporting HWIN and hundreds just like it. Bitcoin continues to be mined in China, Russia, and Belarus. Bitcoin claims to have a limited supply. But, can that actually be verified? On his way out the door, Clayton bought the Ripple action. As you have stated: extremely flawed SEC argument that Ripple IS a security but somehow Bitcoin ISN'T.

In fact: either ALL crypto are securities OR NONE are. The IRS for its part treats cryptos as a capital asset. Subject to capital gains and losses for tax purposes. As your colleagues can attest, the interconnectedness of my information is irrefutable. Several entities including Signature Bank/Greenbox are just 1 example of my "Derivative" information.

Seems to me that Clayton, Hinman, crypto pumper Peirce ALL had KNOWN settled precedent to regulate Bitcoin and ALL crypto as securities: SEC v SG Ltd. Where appeals Court got it right and where Howey was applied:

[Securities & Exchange Commission v. SG Ltd., 265 F.3d 42 | Casetext Search + Citator](#)

[Securities & Exchange Commission v. SG Ltd., 265 F.3d 42 | Casetext Search + Citator](#)

Read Securities & Exchange Commission v. SG Ltd., 265 F.3d 42, see flags on bad law, and search Casetext's comprehensive legal database

casetext.com

The inconsistency in the SEC approach to regulating ALL crypto as securities has caused great confusion in the marketplace and has opened the door wide to fraud.

This is just another example of SEC corruption.

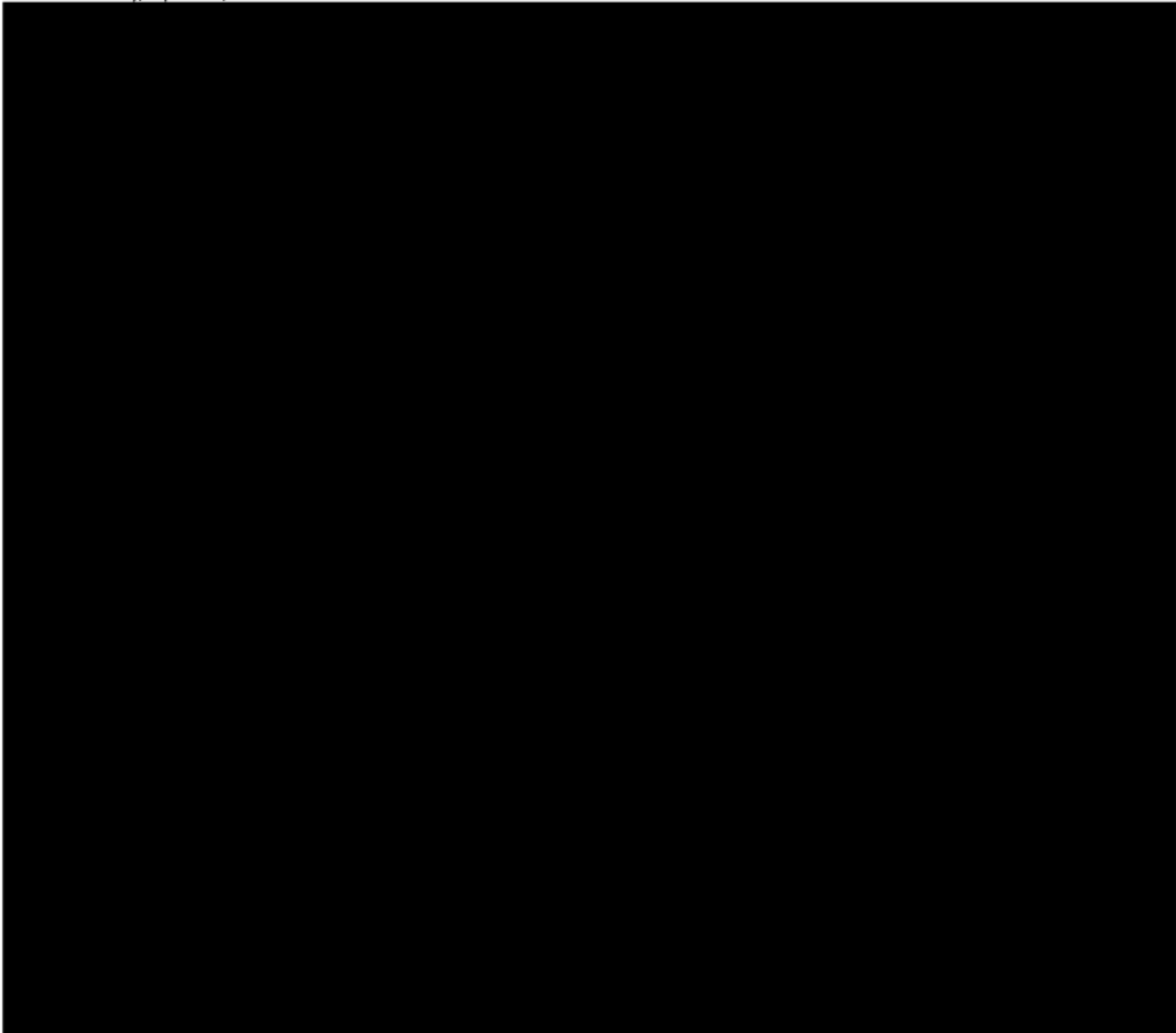
Now, the SEC corruption has reached your Courtroom as well

Cheers!

Christopher J Dilorio

From: Chris Dilorio <[REDACTED]>

Sent: Tuesday, April 20, 2021 11:39 AM



Subject: Fw: Formal appeal for denial covered action 2015-016/ Knight Capital TCR & Appendix

Several typos omissions corrected below

Judge Ramos: SEC 1 Off's

[Sec. & Exch. Comm'n v. Honig, 18 Civ. 8175 \(ER\) | Casetext Search + Citor](#)

[Sec. & Exch. Comm'n v. Honig, 18 Civ. 8175 \(ER\) | Casetext Search + Citor](#)

Read [Sec. & Exch. Comm'n v. Honig, 18 Civ. 8175 \(ER\)](#), see flags on bad law, and search Casetext's comprehensive legal database

[casetext.com](#)

SEC settled quickly with Honig et al. Also Alpha Capital Anstalt: Liechtenstein: IMDS: Bag Man Schlaff: Bawag: Refco:Rhino: Sedona: Scan Graphics: Shaye Hirsch: Karfunkel: Kushners: Nordlicht: Englander: et al: Judge Swain Derivatives.

These SEC 1 off's guarantee the activity continues. It does.

Below: Tri-Mark: Sytner

last 10K filed with the SEC:2010

[form10k5to1holding123110.htm \(sec.gov\)](#)

Pg 46 Honig owned 2,514,786 shares or 7%

That's STATED control

When did the SEC waive 13D/G filings simply because it was disclosed in an audited/SEC reviewed 10K?

Not 1 off's: guarantee activity continues

Judge Ramos, did you put an end to Honig?

NOPE

[Barry C. Honig, et al. \(Release No. LR-24262; Sep. 7, 2018\) \(sec.gov\)](#)

[Barry C. Honig, et al. \(Release No. LR-24262; Sep. 7, 2018\)](#)

The Securities and Exchange Commission today charged a group of ten individuals and ten associated entities for their participation in long-running fraudulent schemes that generated over \$27 million from unlawful stock sales and caused significant harm to retail investors who were left holding virtually worthless stock.

[www.sec.gov](#)

And, as I proved below: Jaclin/Honig STILL up and running in April 2021

SDNY Judges/NY Supreme Court: The SEC CONTINUES to play you for fools while ACTIVELY facilitating massive, ongoing frauds on the public it is mandated to protect while screwing the whistleblower who caught them: ME
As I have stated repeatedly in my correspondence: the record
Multi billionaire Frost wasn't trying to MAKE a few million. Frost et al were LAUNDERING.
Frost: bought Ladenburg from Icahn/LeBow/Lorber: Vector /New Valley. AFTER Icahn rolled his former employer: Gruntal: Sater,Feinberg,SAC et al: MILKEN: into Ladenburg. As MY record also clearly shows: Honig also Colleran: Trump felon fundraiser. AND: Vector/New Valley also Trump/Russia.

"1 off's"!

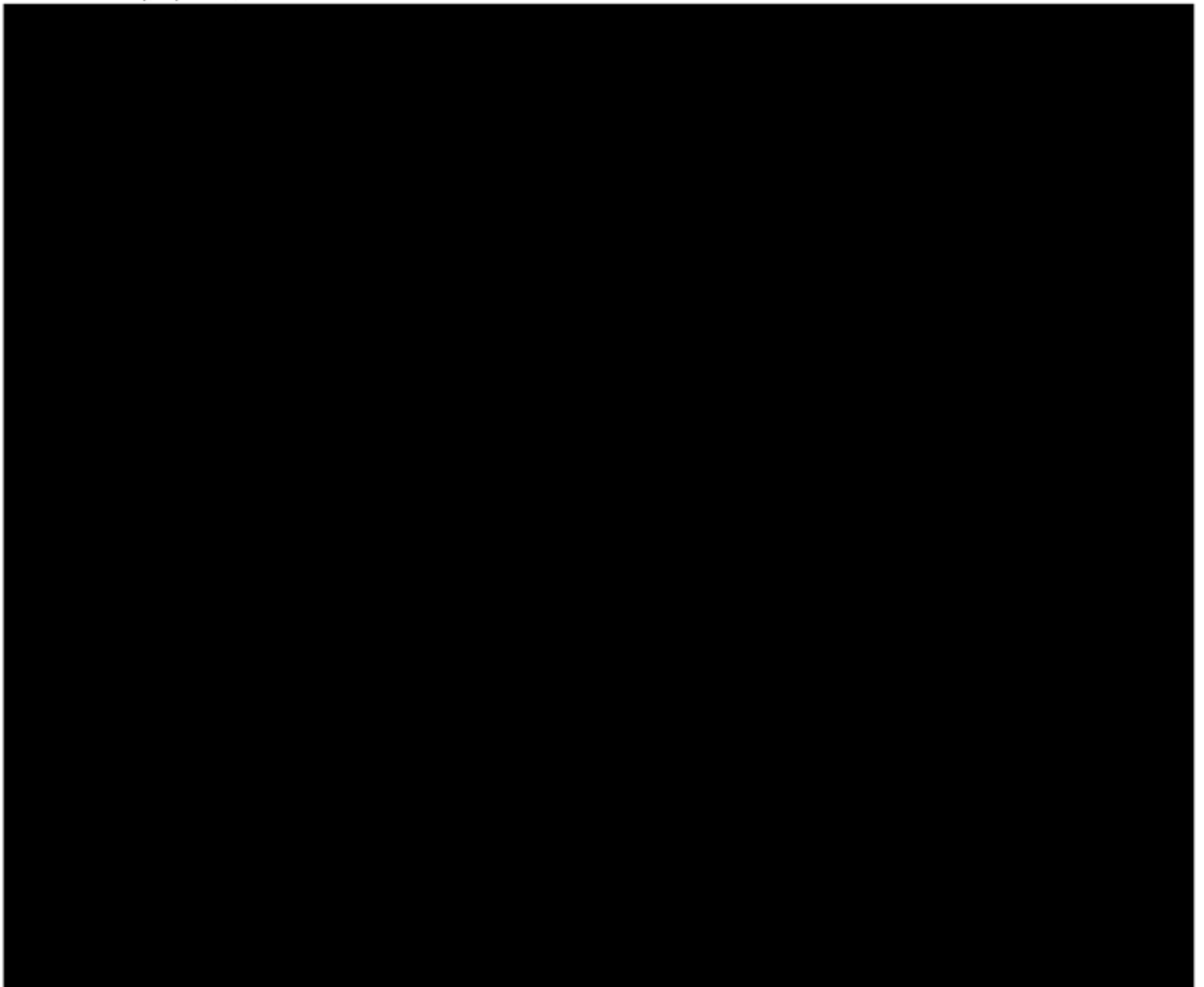
Too f'n funny

Cheers!

Chris

From: Chris Dilorio <[REDACTED]>

Sent: Monday, April 19, 2021 4:10 PM



Subject: Fw: Formal appeal for denial covered action 2015-016/ Knight Capital TCR & Appendix

Welcome to Episode number: I lost track: of SEC criminal obstruction/corruption while screwing the public it is mandated to protect and screwing the whistleblower who caught them: ME.

Give me a call Mr Gensler. Love to catch up. Saw where you did a OTCM esque reverse split in the massive USO fraud on the public.

SDNY Judges et al, when you read about something as absurd and ridiculous as Hometown International with a Deli front and New Jersey and entities in Hong Kong and Macau, you're probably thinking what I was thinking 10 years ago when I began researching NITE and the OTCM shells they traded. But, these are NOT 1 offs. This is WHY the OTCM exists: abusive naked shorting OTCM shells to facilitate money laundering is and always has been the core business at NITE et al. This is WHY NITE has been bailed out multiple times by other criminal entities. There is no such thing as just 1 cock roach. HWIN is no different. It is part of a MUCH MUCH bigger and well orchestrated scheme.

More on Hometown International:

Hey look, there's a Senegal/Ivory Coast individual named Ibrahima Thiam with a Macau address

[OTCQB-Certification.pdf \(sec.report\)](#)

If the name Thiam is familiar, it should be: Tidjane Thiam the former CEO of Milken controlled Credit Suisse: Jim Justice: Greensill.

The resemblance is striking. Don't you think?

[Ibrahima Thiam - Wetlands International](#)



Ibrahima Thiam - Wetlands International

P.O. Box 471 6700 AL Wageningen The Netherlands. Tel. +31 (0) 318 660 910 E-mail: RSIN Number: 806703726
Reg No: 09099028

www.wetlands.org

You know the 1 I'm talking about Judge Silver: NITE top traded/multiple SEC/FINRA reverse splits/Jim Justice: 5 Mile: Perian Salviola/Josh Sason/Sichenzia : NewLead fame? AND sister fraud "Greek Shipper" FreeSeas: also NY Supreme Court. Also Sason/Sichenzia. But with other Milken flunkie Terren Peizer. Crede. Along with Deutsche Bank and Credit Suisse. Peizer/Crede also Net Element. Net Element former CFO New: also Blink Charging: with MJJ/Keener AND Prolific Bag Man Michael Farkas. MORE derivatives

More on Farkas later in the e mail. Read on

And, not to get too graphic

But another Hong Kong/Macau HWIN "investor" is Swiss "model" Nathalie Pasyawon

[Nathalie Pasyawon - Boobpedia - Encyclopedia of big boobs](#)

Interconnectedness defined. OR as I like to say MORE DERIVATIVES

The 2020 SEC reviewed HWIN 10K filed March 26, 2021

https://www.sec.gov/Archives/edgar/data/1632081/000121390021018020/f10k2020_hometowninter.htm

www.sec.gov

UNITED STATES SECURITIES AND EXCHANGE COMMISSION Washington, D.C. 20549 . FORM 10-K (Mark One) ☒ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 For the fiscal year ended: December 31, 2020 or ☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934 For the transition period from ____ to ____

www.sec.gov

Guess who has been the HWIN auditor since 2015?

Fined/censured by PCAOB Liggett and Webb

James Liggett/Martin Webb

[Microsoft Word - 105-2020-010-LW.docx \(azureedge.net\)](#)

Not the ONLY money laundering shells L/W CPA are involved in either

[Directory - Service Provider Directory | OTC Markets](#)

[OTC Markets | Official site of OTCQX, OTCQB and Pink Markets](#)

Get Stock & Bond Quotes, Trade Prices, Charts, Financials and Company News & Information for OTCQX, OTCQB and Pink Securities.

www.otcmarkets.com

Several SEC reporting

AND a few more with up and running TODAY

NASDAQ listed Orbital Energy Group OEG

[EDGAR Search Results \(sec.gov\)](#)

Aqua Power Systems APSI. That's Aqa Power systems fka NC Solar: a Jaclin money laundering shell

[EDGAR Search Results \(sec.gov\)](#)

https://www.sec.gov/Archives/edgar/data/1553264/000114420412044855/v321146_s1.htm

Bang Holdings Corp BXNG: VERY appropriate Name. Read on. Also Jaclin. Also Zenith. AND Platinum
[EDGAR Search Results \(sec.gov\)](#)

Brownies Marine Group BWMG
[EDGAR Search Results \(sec.gov\)](#)

C2E Energy Inc OOGI FKA Odyssey Oil and Gas: through 2020: a NY HQ company
https://www.sec.gov/Archives/edgar/data/1160798/000121390021020286/f10k2020_c2eenergyinc.htm

www.sec.gov

The Company intended to expand the making of bio fuels from algae to other large mining Companies in South Africa. On May 26, 2009, the Company acquired 51% of H-Power (Pty) Ltd. H-Power (Pty) Limited, a South African registered company, which owns an exclusive license to develop and market batteries based on patented Hybrid Battery Technology worldwide. However, on August 27, 2009, the ...

www.sec.gov

Enviro Technologies US Inc EVTN
[EDGAR Search Results \(sec.gov\)](#)

Hometown International HWIN
See Below

Ocean Thermal Energy Corp CPWR
[EDGAR Search Results \(sec.gov\)](#)

Point Of Care Nano-Technology Inc PCNT fka Alternative Energy and Environmental Solutions: Also Jaclin
[fs10511_altenergy.htm \(sec.gov\)](#)

[EDGAR Search Results \(sec.gov\)](#)

Second Street Capital CTON
[content \(otcm Markets.com\)](#)

Vynleads Inc VYND
[EDGAR Search Results \(sec.gov\)](#)

PuraDyn Filter Technologies PFTI
[EDGAR Search Results \(sec.gov\)](#)

A New York Liggett/Webb money laundering shell is C2E Energy Inc

Began as an "exercise equipment " shell controlled by Curtis Olschansky

Everyone remember the Better Buns machine?

https://www.sec.gov/Archives/edgar/data/1160798/000114420407015535/v069715_10ksb.htm

SEC

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15 (d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

www.sec.gov

Here's ANOTHER lesson in derivatives for the slow on the uptake

New York C2E Energy Inc is now controlled by PROLIFIC Bag Man David Lazar/Zenith Partners/International /Equity Holdings LLC's and Custodian Ventures.

https://www.sec.gov/Archives/edgar/data/1160798/000121390021020286/f10k2020_c2eenergyinc.htm

www.sec.gov

The Company intended to expand the making of bio fuels from algae to other large mining Companies in South Africa. On May 26, 2009, the Company acquired 51% of H-Power (Pty) Ltd. H-Power (Pty) Limited, a South African registered company, which owns an exclusive license to develop and market batteries based on patented Hybrid Battery Technology worldwide. However, on August 27, 2009, the ...

www.sec.gov

Lazar/Zenith following money laundering shells:

Mediashift MSHF

Melt Inc MELT

XXStream XMET

FinotecGroup FTGI

Enabling Asia Inc EAIN

Goff Corp GOFF

NYSE listed SyntheticBiologics SYN

Exobox EXBX

just to name a few

Lazar NY address: 3445 Lawrence Ave

Oceanside, NY

Also SEC NY

Lazar partner in Zenith is Los Angeles/Beverly Hills/Santa Monica based Barry Sytner

also home to Mogilevich Bag Man Milken/Dexel/Boyd Jefferies et al

Sytner was himself in control of Tri - Mark Mfg Inc with guess who? Barry Honig

[EDGAR Search Results \(sec.gov\)](#)

and another money laundering shell up and running today: Chinese \$\$ laundering shell Worry Free Holdings
Teed up and ready to go with Rent A CFO: CFO NOW
Worry Free is FKA SEC reporting iVoicelideas Inc

[EDGAR Search Results \(sec.gov\)](#)

[Microsoft Word - WYCC 30 SEPT 2018 OTC FILING.FILED VERSION \(otcmartets.com\)](#)

Worry Free not the only Lazar China \$\$ laundering shell

Hong Kong Winalite Group

[EDGAR Search Results \(sec.gov\)](#)

Not revoked by the grossly corrupt SEC after 10 years of no financial disclosures. Rather: voluntarily suspended by Lazar to be re used at a later date. Per my record with the SEC et al: money laundering shells go dark AFTER the fraud is committed. SEC does nothing to PREVENT the fraud from happening in the first place

https://www.sec.gov/Archives/edgar/data/1059885/000121390020001328/f1515d0120_hongkongwinalite.htm

Anyone keeping track of the Jaclin/Honig related money laundering shells we're up to so far?

Again: the Lazar/Sytner/Zenith/Custodian Ventures/Liggett/Webb list is not exhaustive

But in excess of 20 money laundering shells up and running today should be a good start. Don't you think Mr Gensler?

Of course, the money laundering shell that ties all of these ongoing frauds together is Bang Holdings: BXNG

https://www.sec.gov/Archives/edgar/data/1632323/000161577415000921/s101040_s1.htm#INTEREST

SEC.gov | HOME

(1) This Registration Statement covers the resale by our selling shareholders up to (1) 1,857,050 shares of common stock previously issued to such selling shareholders and (2) 1,500,000 shares of common stock issuable upon exercise of outstanding warrants ("Warrants") at an exercise price of \$0.35 per share, that were issued in connection with a Securities Purchase Agreement by and between ...

www.sec.gov

A Colorado incorporated/Miami based/Jaclin money laundering shell where Liggett/Webb are auditor with Farkas/Platinum/Zenith Equity Holdings/Michael Bernstein et al

[EDGAR Search Results \(sec.gov\)](#)

Vast majority: SEC reporting. Several Jaclin. BXNG: Farkas/Jaclin. Several with Chinese Nationals.

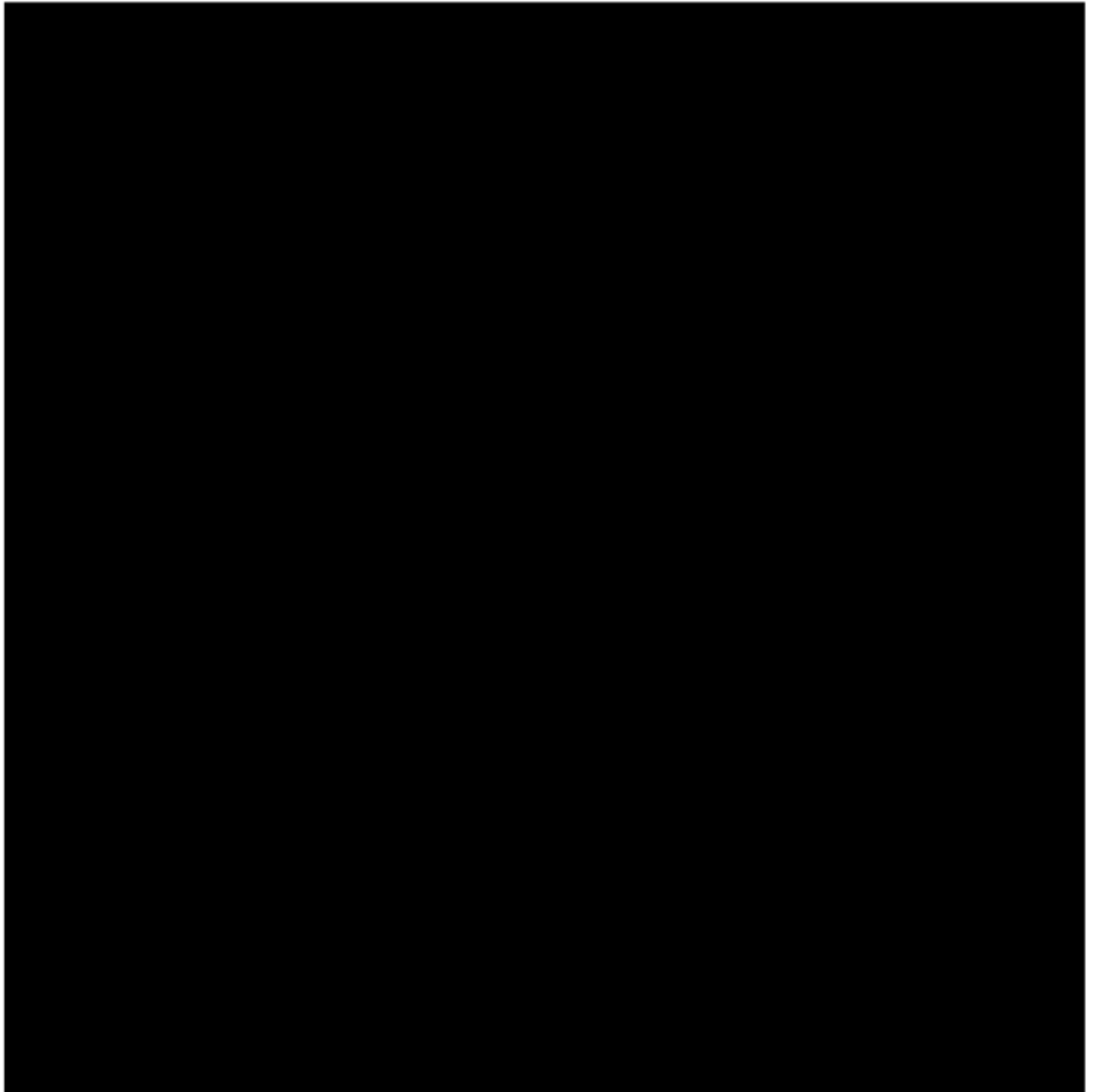
Zenith/Lazar/Sytner: Jaclin 2.0 like Honig. ABSOLUTELY NOTHING random about this as I have stated repeatedly: MASSIVE in scope/Brazen/Egregious/ongoing/SEC facilitated/SEC IG complicit frauds on the public the grossly corrupt SEC is mandated to protect while screwing the whistleblower who caught them: ME. AND NONE OF IT HAPPENS without well known criminal entities like executing BD/MM's NITE et al. NOT the "penny stock trading fairies"

No, SDNY/NY Supreme Court Judges: Hometown International is NOT a 1 off that slipped through the cracks. At ALL times Jaclin has been under the jurisdiction of the SEC NY. At ALL times SEC NY ALSO under the jurisdiction of the SDNY.

Cheers!
Chris

From: Chris Dilorio <[REDACTED]>

Sent: Saturday, April 17, 2021 10:31 AM



Subject: Fw: Formal appeal for denial covered action 2015-016/ Knight Capital TCR & Appendix

SDNY Judges and SEC IG,

I would like to Re admit the following which is part of my extensive record with the grossly corrupt SEC: Jaclin Money laundering shells: Honig et al. AND prolific Bag Man Michael Farkas: BLNK,ICLD etc etc
Have you been watching the story about this Deli in New Jersey with a \$100 million dollar market cap?

[US Financial Markets Have Become A Giant Mirage Built On A Foundation Of Fraud | ZeroHedge](#)



US Financial Markets Have Become A Giant Mirage Built On A Foundation Of Fraud

ZeroHedge - On a long enough timeline, the survival rate for everyone drops to zero

www.zerohedge.com

SDNY judges/ SEC IG: This is what I have been telling the grossly corrupt SEC for more than 8 f'n years now. ALL of this activity is up and running TODAY: April 2021 thanks to SEC criminal obstruction and corruption. The SEC is a criminal enterprise ACTIVELY facilitating multiple, ongoing frauds on the public it is mandated to protect to the benefit of the criminals who own them while screwing the whistleblower who caught them: ME Say Hi to the OTCM Pink money laundering shell Hometown International
[EDGAR Search Results \(sec.gov\)](#)

pg 22 and following of Selling Shareholders in this 2020 SEC approved S1

https://www.sec.gov/Archives/edgar/data/1632081/000121390020014269/ea122720-s1_hometown.htm#j_015

SEC.gov | HOME

(1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended (the "Securities Act"), there are also being registered hereby an additional indeterminate number of shares of the Registrant's Common Stock, \$0.0001 par value (the "Common Stock") as may become issuable to the selling stockholders as a result of stock splits, stock dividends and similar transactions, and, in ...

www.sec.gov

New Jersey Deli with "investors" in Macau, Hong Kong etc

Welcome to my world in dealing with the grossly corrupt SEC

Of course, Hometown International was ANOTHER Jaclin money laundering shell kept up and running by the grossly corrupt SEC

https://www.sec.gov/Archives/edgar/data/1632081/000114420415059929/v422176_s1.htm

SEC.gov | HOME

25 E. Grant Street . Woodstown, NJ 08098 (856)759-9034 (Address, including zip code, and telephone number, Including area code, of registrant's principal executive offices)

www.sec.gov

What I have been telling the grossly corrupt SEC for YEARS: This is WHY the OTCM exists. AND, in Q1 2021, more than 4 TRILLION shares of money laundering shells like Hometown International were traded by NITE, CDEL et al.

[Market Statistics - Equity Trading Data Monthly \(finra.org\)](https://www.finra.org/market-statistics)

ABSOLUTELY nothing has changed in the last 8 years. Infact, as the grossly corrupt SEC,DoJ et al have been in possession of my information, this illegal activity has EXPLODED.

SEC IG: DO YOUR FUCKING JOB!!!!!!

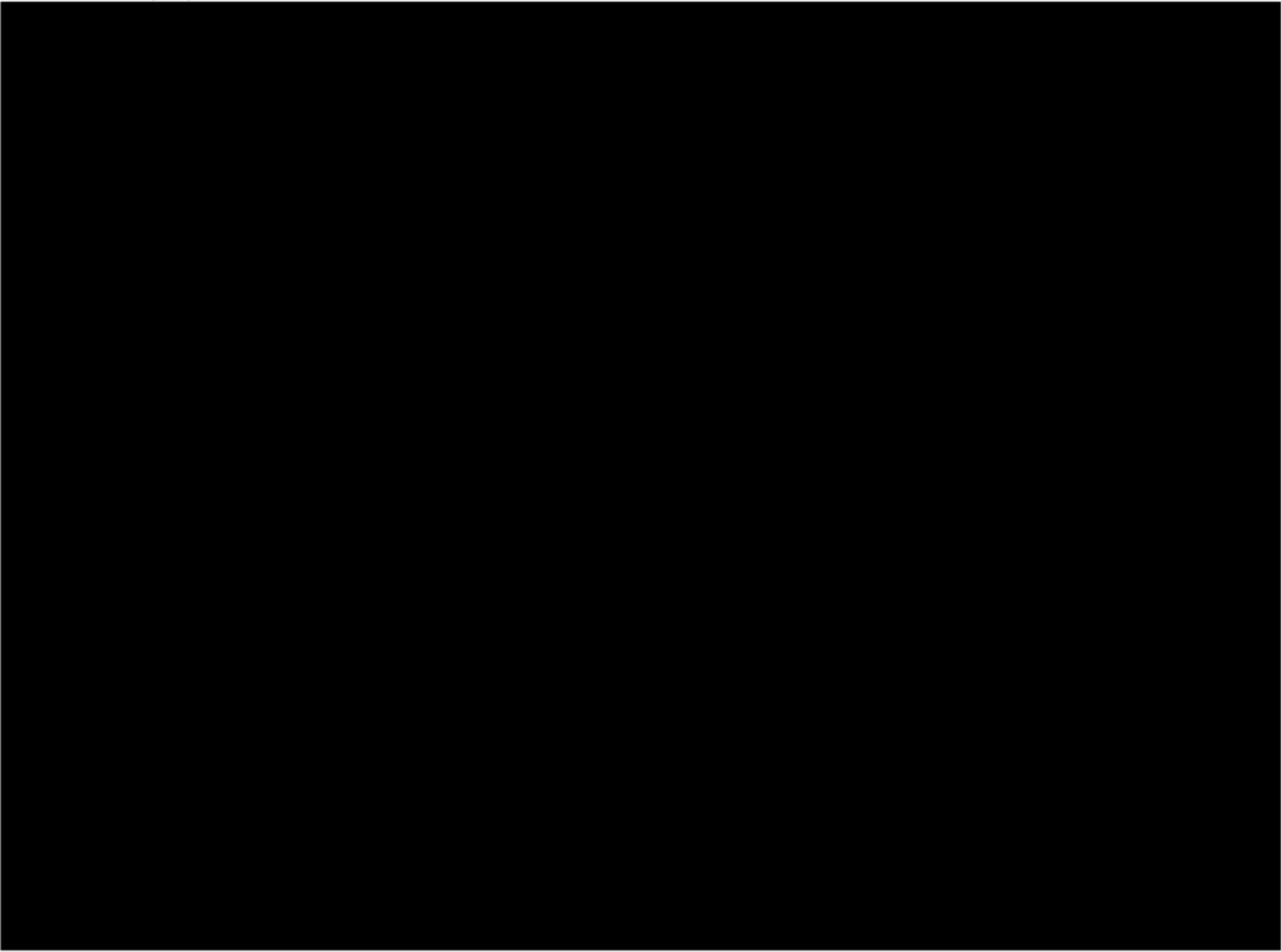
Hometown International: Woodstown NJ: SEC NY: SDNY jurisdiction

Cheers!

Chris

From: Chris Dilorio <[REDACTED]>

Sent: Monday, April 5, 2021 5:29 AM



Subject: Fw: Formal appeal for denial covered action 2015-016/ Knight Capital TCR & Appendix

Judge Swain: still ANOTHER version of A Stroll Down the ABSOLUTELY NOTHING HAS CHANGED Avenue. This is another version of my extensive correspondence as I wait on the SEC Final Determination. Below, I detailed the \$765 million fraud DFC/taxpayer loan to almost insolvent Kodak to transition from film/cameras(buggy whips) to hydroxychloriquine. The DFC was run by Jared Kushner's college roommate. Massive fraud from the outset. The SEC of course never investigated the massive pump and dump related to this fraud. AND, thanks to the SEC egregious obstruction of Congress: there is STILL no CAT. Of Course the DFC first appointed IG Zakel (Sep 6 2020) concluded 2 months later that Jared's roommate didn't break any laws. Further: The Akin Gump internal investigation is ripped to shreds by yours truly below. AGAIN: There was no Clayton et al/SEC OR DoJ investigation into the egregious Insider Pump and Dump that took place in KODK related to the fraud DFC taxpayer loan.

The interconnectedness of my claims on display yet again.

Some Interesting entities involved with Blackstone/Schwarzman/New in the almost insolvent at the time/still: KODK.

Recall from a version I sent last week Judge Swain:

Sedona/Scan Graphics: 1998

Kushners/Nordlicht/Englander AND

The Karfunkel Family Trust

<https://www.sec.gov/Archives/edgar/data/764843/0000943396-98-000012.txt>

KODK got some attention when GEORGE KARFUNKEL made a generous donation to a "synagogue" in Brooklyn called Congregation Chemdas Yisroel

https://www.sec.gov/Archives/edgar/data/31235/000121390020020114/ea124950sc13da2karfunkel_eas.htm

SEC.gov | HOME

This Amendment No. 2 to Schedule 13D ("Amendment No. 2") relates to the common stock, \$0.01 par value per share (the "Common Stock"), of Eastman Kodak Company, a New Jersey corporation (the "Issuer"), and amends and supplements the initial statement on Schedule 13D filed on May 18, 2017, as amended and supplemented by the Schedule 13D/A filed on December 6, 2019 (the "Schedule ...

www.sec.gov

Chemdas Yisroel address:

This EXACT address is the home of Roth CPA's etc

Which also has offices in Israel

[Roth&Co – We understand that your business is your life's work \(rothcocpa.com\)](http://rothcocpa.com)

Roth&Co - We understand that your business is your life's work

NEW YORK. 1428 36th Street, Suite 200 Brooklyn, NY 11218 Phone: 718-236-1600 Fax: 718-236-4849

rothcocpa.com

Important to note here that George Karfunkel founded 1 of the largest Stock transfer companies: American Stock Transfer. Did I mention there was no Jay Clayton et al/SEC/DoJ Insider trading/P&D investigation into KODK?

I digress.

See, back in 2004, Barry F'n Honig had a shop called GRQ Consultants

GRQ was involved in 2 money laundering Shells:

Amplidyne yada yada

[EDGAR Filing Documents for 0001170022-05-000036 \(sec.gov\)](https://www.sec.gov/Archives/edgar/data/0001170022/05-000036/sec.gov)

AND

Cell Power Technologies

[EDGAR Filing Documents for 0001144204-04-007936 \(sec.gov\)](https://www.sec.gov/Archives/edgar/data/0001144204/04-007936/sec.gov)

Everyone catch the address of this Cell Boost "technology" Cell Power?

The SAME address as Chemdas Yisroel and Roth CPA's

but just down the hall: Suite 205

This is priceless.

An SEC approved offering from 2005 for Cell Power

https://www.sec.gov/Archives/edgar/data/1202034/000114420405030051/v026245_424b3.txt

Who was the law firm on this money laundering shell in 2005???

Sichenzia Ross. The same law firm responsible for NewLead and FreeSeas: 2 massive frauds perpetrated on the SDNY Courts as well as NY Supreme Court. Brought to you by the grossly corrupt SEC.

Gets better still....

The SEC revoked Cell Power Technologies in 2010

[EDGAR Search Results \(sec.gov\)](https://www.sec.gov/Archives/edgar/data/0001144204/10-000036/sec.gov)

Barry Honig/Jaclyn: also Blink Charging with prolific Bag Man Michael Farkas, JMJ, Drexel Alum Director, Jonathan New: NETE CFO up and running in 2021.

And Barry Honig: Frost/Stetson/Collieran/ Alpha Capital et al

Recall the record Janey: "multi billionaire Frost wasn't trying to MAKE a few million. Frost was laundering"

Frost: bought Ladenburg from Icahn/Vector after Ladenburg bought Gruntal: Milken, SAC, Feinberg et al

Collieran: Trump felon fundraiser

Alpha Cap: Schlaff: Bawag/Refco/Sedona/Judge Swain: also my Knight/KCG/VIRT:NITE TCR

2020. TEN YEARS AFTER the SEC revoked the Honig/Sichenzia money laundering shell down the hall from Chemdas Yisroel/Roth CPA: Garfunkel: Cell Power Technologies

Garfunkel: 1998 Sedona/Scan Graphics w/Kushners et al

Karfunkel/Chemdas Yisroel/Roth CPA's weren't the only ones to "get the look" (for those of you with ZERO trading experience charged with enforcing Securities Laws like insider trading, this is the term used for insider trading)

Moses Marx also "got the look"

[EDGAR Filing Documents for 0001104659-20-089495 \(sec.gov\)](#)

EDGAR Filing Documents for 0001104659-20-089495

EASTMAN KODAK CO (Subject) CIK: 0000031235 (see all company filings) IRS No.: 160417150 | State of Incorp.:NJ | Fiscal Year End: 1231 Type: SC 13D/A | Act: 34 | File ...

www.sec.gov

Marx and Karfunkel go way back and are still in business together

Does United Equities/Commodities ring any bells?

How about Berkshire Bancorp? ANOTHER New York licensed Bank

[EDGAR Search Results \(sec.gov\)](#)

Karfunkel/Marx moved BERK from the NASDAQ to the OTCM Pinks around 2013

WHY? Less disclosure stupid.

[Microsoft Word - {D634DCBC-639A-4A58-8504-3EDC20157A89} \(otcmkt.com\)](#)

hey look! Marx,Karfunkel:BERK has the same auditor as Trump: Mazars. Prly just ANOTHER coincidence. For those of you incapable of following along: The probability that ALL of the Karfunkel illgotten gains in the SEC/Trump/Kushner/Blackstone/DFC et al facilitated P&D/Insider trading went to Congregation Chemdas Yisroel is virtually ZERO.

Have I mentioned there was NO :zero,zilch,nada Jay Clayton et al/SEC/DoJ insider trading investigation into KODK?

OK, good. Got it covered

Maybe, just maybe had the grossly corrupt SEC thoroughly investigated my irrefutably accurate allegations: Blackstone/Schwarzman: NITE, the massive pump and dump fraud:Blackstone et al: KODK wouldn't have happened. Which is why there has NEVER been a thorough investigation of my irrefutably accurate allegations. In fact, the grossly corrupt SEC has criminally obstructed a thorough investigation of my claims SO THAT frauds like KODK can continue. The SEC is bought and paid for by criminals while actively facilitating MULTIPLE frauds on the public it is mandated to protect WHILE screwing the whistleblower who caught them:ME. the record Janey is IRREFUTABLE.

Finally Ms Wing/Strauss: will you be keeping your DOJ e mail address up and running months after you land a new gig like Geoffrey Berman has? Almost like he never left.

So Judge Swain: What has changed since your Sedona/Badian/Hirsch/Refco/Bawag decision?

ABSOLUTELY NOTHING!

Yes: Blackstone/Schwarzman/Marx/Karfunkel/Kushner/Trump et al are most definitely on the SEC/DoJ "Do not investigate List"

Cheers!

Chris

From: Chris Dilorio <[REDACTED]>

Sent: Wednesday, September 23, 2020 7:18 PM

Subject: Fw: Formal appeal for denial covered action 2015-016/ Knight Capital TCR & Appendix

Judges Cave and Nathan,

If there was ANY question as to the veracity of my extremely serious allegations, the SEC put it to rest today with its "clarification" and new rules governing the Whistleblower program:

My preliminary denial in June for the Opco Award application which was 5 years in the waiting: "SEC staff never saw Mr Dilorio's information"

I refer you to the ONLY new rule in the "clarifications" in the interest of "transparency"

<https://www.sec.gov/rules/final/2020/34-89963.pdf>

SECURITIES AND EXCHANGE COMMISSION 17 CFR Parts 240 and 249 RIN 3235-AM11 ACTION SUMMARY

SECURITIES AND EXCHANGE COMMISSION . 17 CFR Parts 240 and 249 [Release No. 34-89963; File No. S7-16-18] RIN 3235-AM11 . Whistleblower Program Rules

www.sec.gov

New Rule 240.21F-18 Summary Disposition

(3) The information you submitted was never provided to or used by the staff handling the covered action or the underlying investigation (or examination), and the staff members otherwise had no contact with you.

AKA the Christopher J Dilorio Rule. Created to deny awards of rightful compensation. Per my appeal: a whistleblower CAN NOT know who at the SEC he/she should contact as investigations are done in strict confidentiality. Further, the OWB itself is the CENTRAL contact for whistleblowers. It is the EXPLICIT and EXCLUSIVE responsibility of the OWB to distribute whistleblower information within the SEC. This "rule" is FURTHER overwhelming evidence of SEC corruption and obstruction.

Judges Cave and Nathan: ALL information presented to your Courts must be treated with extreme skepticism if not outright disdain. IF the SEC is willing to commit massive fraud on whistleblowers who expose their corruption and criminal activity just imagine the evidence it is willing to fabricate to bring a case like they are in Kamensky. An immediate STAY in Kamensky is warranted until an independent thorough investigation of my claims can be executed. ALL evidence presented to your courts by the SEC must be questioned in light of the overwhelming evidence I have provided. Again: this corruption goes straight to Jay Clayton himself. His former colleague Jared Fishman has played a key role in this massive fraud. Clayton NEVER disclosed these conflicts. In addition, your Honors are in possession of other Clayton/Sull Crom/AQR/Girsky facilitated fraud: Nikola. This is what it has come to when you blow the whistle on the grossly corrupt SEC: They create a completely arbitrary and fraudulent rule to silence you.

Rule 204-21F summary disposition aka Screw the whistleblowers exposing SEC corruption Rule OR

EFTA00039737

The Christopher J Dilorio Rule

Regards,
Christopher J Dilorio
Whistleblower
[REDACTED]

FROM:Chris Dilorio <[REDACTED]>
Sent: Wednesday, September 23, 2020 5:27 AM

[REDACTED]

Subject: Fw: Formal appeal for denial covered action 2015-016/ Knight Capital TCR & Appendix

Judges Cave and Nathan,

My allegations are chock full of members of the SEC "Do Not investigate Club". Per my TCR: Key to the Aug 2012 "glitch/Bailout: Blackstone/Schwarzman. Blackstone had done extensive Due Diligence on Knight prior to the "glitch" and had considered buying them north of \$14/sh. Somehow/some way Blackstone decided not to go ahead with buying Knight not too long before the "glitch" which took the stock to \$3. The ultimate bailout deal was NOT collateral based. Rather a convert with a %50 discount to \$3: \$1.50/share. "WHEW". Per my TCR: ALL 2012 "glitch" bailout participants including Blackstone knew EXACTLY the fraud on the Knight balance sheet. Because of SEC corruption/criminal obstruction, NITE is insolvent TODAY. Absolutely nothing has changed. A massive ongoing fraud on the public.

As a direct result of the SEC "Do not investigate Club", The KODK/Blackstone fraud on US Taxpayers (see below) was perpetrated on the public.

Steve Schwarzman/Blackstone are near the top of the SEC "Do not investigate List".

Obviously, Mr Kamensky is not in the Club.

As you can clearly see from my appeal to the OWB: The SEC intended to run out the clock. 5 years in the waiting in their Preliminary Determination Opco Award Denial for " Investigators never saw my information". Yet, SEC actions based on my information include: Hanover/Magna, JMJ/Keener, Fife, Southridge/Hicks, Opco, and UBSS. Missing somehow: NITE, Handler/Jefferies, Blackstone/Schwarzman etc etc.

The last overt act of this massive conspiracy has not yet occurred.

Mr Kamensky and I are BOTH victims of a longstanding and corrupt relationship between the SEC and Handler/Jefferies et al. Also victim of this corruption: the investing public the SEC is mandated to protect and the US Taxpayer.

Regards,
Christopher J Dilorio
Whistleblower
[REDACTED]

From: Chris Dilorio <[REDACTED]>
Sent: Wednesday, September 16, 2020 6:25 AM

Subject: Fw: Formal appeal for denial covered action 2015-016/ Knight Capital TCR & Appendix

Janey,
Schwarzman must be pretty close to the top of the SEC's "do not investigate" list.
The latest Schwarzman/Blackstone orchestrated fraud and cover up: KODK
Today, the KODK Board Member Jason New: Blackstone "independent" outside inquiry by the law firm Akin Gump is in

<https://www.kodak.com/content/products-brochures/Company/Report-to-the-Special-Committee-09.15.2020.pdf>

"gaps" indeed
The flowery New/BX cover up is chock FULL of gaps.
"Introduction to Phlow"

Phlow: the VA consortium receiving \$350 mil in Government Covid funding to provide Trump pushed Covid Cure: hydroxychloroquine

<https://www.prnewswire.com/news-releases/phlow-corporation-awarded-354-million-hhsasprbarda-contract-to-manufacture-essential-medicines-in-shortage-301061648.html>

Phlow Corporation Awarded \$354 Million HHS/ASPR/BARDA Contract to Manufacture Essential Medicines in Shortage - PR Newswire

RICHMOND, Va., May 19, 2020 /PRNewswire/ -- Phlow, a U.S.-based, public benefit drug manufacturing corporation, has received federal government funding of \$354 million for advanced manufacturing ...

www.prnewswire.com

Phlow already has/had a long standing relationship with Ampac Fine Chemicals

<https://www.phlow-usa.com/about-us/>



About Us | Phlow Corporation

Robert Mooney is a tireless champion of creativity and business acumen. As an entrepreneur and co-founder of New Richmond Ventures (NRV), Bob counseled startups and early stage companies on accounting and financial reporting, capital

strategies, equity raising, project financing, milestones, business

www.phlow-usa.com

In May 2020, Phlow was re starting/building a mfg facility/warehouse with partner Ampac (AFC) to fulfill its Government contract

<https://richmondbizsense.com/2020/05/20/new-richmond-based-pharma-startup-with-350m-in-funding-eyes-facility-in-petersburg/>



New Richmond-based pharma startup with \$350M in funding eyes facility in Petersburg - Richmond BizSense

Earlier this month BizSense first reported Phlow's initial government contract for \$6 million, but details on the company's plans remained unclear at the time.. Gupton said in an interview Tuesday the company's plans have been in the works for about 18 months, well before COVID-19 hit.

richmondbizsense.com

Per the KODK/New/BX/Akin Gump cover up: pg 20

"On June 15 2020,Kodak signed a Letter of Intent with Phlow in furtherance of its application to the DFC to show it had a CUSTOMER for its future API's"

Most definitely "DEFINITIVE AND MATERIAL"

So, where is the SEC reviewed/required 8k for this agreement?

<https://www.sec.gov/cgi-bin/browse-edgar?CIK=31235>

Meaning: the DFC application was a FRAUD. Fraud on the government. Fraud on American taxpayers.

Further: WHY would the DFC consider "loaning" \$765 million to KODK with NO EXISTING API capability when it already granted LESS money to Phlow/Ampac with proven capabilities? Answer: KODK liquidity issues are SEVERE

Like Milken: Insider trading is NOT the real issue here. The latest BX orchestrated "glitch": KODK.

I know this information may be more than the SEC/DoJ are capable of comprehending.

Call me and I'll walk you through it SLOWLY.

Cheers!

Christopher J Dilorio

Whistleblower

[REDACTED]
[REDACTED]

From: Chris Dilorio <[REDACTED]>

Sent: Tuesday, September 1, 2020 7:40 AM

Subject: Fw: Formal appeal for denial covered action 2015-016/ Knight Capital TCR & Appendix

Janey,

MORE on the Blackstone/Trump/Kushner KODK P&D gift.

Again, BX helped orchestrate the Knight "glitch" and bailout. No doubt, the "luckiest" f'ers on the Street. VERY high on the SEC do not investigate list. So, they can continue to facilitate criminal activity.

See below: Jason New: KODK BoD: BX. In charge of the KODK "internal investigation". Now we read where D E Shaw has taken a 5% stake in KODK. guess who DE Shaw largest investor is: Blackstone. Corruption cover up. For the record Janey

<https://www.thetrustedinsight.com/investment-news/de-shaw-blackstone-20190325420/>

Cheers!

Christopher J Dilorio

Whistleblower

From: Chris Dilorio <[REDACTED]>

Sent: Thursday, August 20, 2020 12:04 PM

[REDACTED]

Subject: Fw: Formal appeal for denial covered action 2015-016/ Knight Capital TCR & Appendix

Mr Best,

Congratulations on your new position as Director of SECNY.

No doubt you have earned the promotion. For those of you who don't know Dick Best from his FINRA days, this masterpiece is what got him his job at the SEC Atlanta office

<https://www.finra.org/media-center/news-releases/2014/finra-fines-brown-brothers-harriman-record-8-million-substantial-anti>

The BBH AML complaint. Truly, fantastic work.

ALL of the entities in the complaint are un named. WHY?

This is my information.

Swiss Banks, FFI's, and of course: penny stock trading fairies aka executing BD's/MM's that made it all possible. Per Dick's complaint: BBH delivered 80%+ of the trades to executing BD's/MM's. Did Dick Best criminally obstruct an investigation into my claims? Per my extensive correspondence with Robin Traxler at FINRA AND the fact that the SEC had my Knight Capital TCR in its possession for almost a year when Dick brought his BBH complaint. So, did Dick's complaint implicate entities in my TCR and that's why ALL of the entities in Dick's complaint are un named? Most certainly YES.

Recall, this scheme generated \$850 MILLION in proceeds. Dick's \$8 mil fine was not a deterrent. Intentionally so.

So Congrats Dick on your new position as Director at SECNY. Janey, Hoecker, Dick, the record is extensive of my correspondence including Dick Best at the Atlanta Office. No doubt he will be recusing himself related to matters involving the un named entities in his FINRA BBH complaint. OR will he do what is expected at the SEC: Criminally obstruct investigations while screwing whistleblowers like me?

Cheers!

Christopher J Dilorio

Whistleblower
[REDACTED]
[REDACTED]

From: Chris Dilorio <[REDACTED]>

Sent: Wednesday, August 19, 2020 6:53 AM

[REDACTED]

[REDACTED]

Subject: Fw: Formal appeal for denial covered action 2015-016/ Knight Capital TCR & Appendix

Further:

Janey, Hoecker, Jay, Mehraban et al

Let me help narrow down the SEC facilitated, ongoing accounting fraud at NITE as I know none of you have ever spent a day on a trading desk:

IF the avg holding period for VIRT HFT is a matter of seconds AND VIRT goes home flat every night, then what is the receivable/fails related to? With the core Virtu HFT business eliminated, what that does that leave? The CASH OTCM business maybe? Should I draw a picture in crayon for you Ms Mehraban?

NITE: 3 different CFO's in the last year. Ms Mehraban, How much is your former Paul Weiss colleague/boss Dougie Cifu paying you to criminally obstruct an investigation of my allegations?

Janey, Hoecker, Mehraban et al: When it comes to trading fraud/accounting fraud cover ups, SEC attorneys are CLEARLY not qualified.

The record there is ALSO IRREFUTABLE.

Here glitchy glitchy.

Cheers!

Christopher J Dilorio

Whistleblower

[REDACTED]
[REDACTED]

From: Chris Dilorio <[REDACTED]>

Sent: Tuesday, August 18, 2020 6:37 PM

[REDACTED]

Subject: Fw: Formal appeal for denial covered action 2015-016/ Knight Capital TCR & Appendix

Janey, Hoecker, Mehraban, Jay et al,

The massive SEC facilitated fraud on the public known as Knight/KCG/VIRT: NITE is reaching epic proportions in August 2020. For the new "accounting" hires at the SEC:

In 1Q2020, the receivable at NITE was up 90% or \$1.2 BILLION from Dec 2019 to \$2.562,721 billion

Per the extensive record Janey: fails: because of self clearing are booked as a receivable. FRAUD. no intention of delivering. More accurately a liability. AND per my 2013 TCR: a large portion: structural liability as a result of an open naked short fail position WHEN not if a reverse split is approved by the grossly corrupt SEC/FINRA. There are some new "buckets" Malusso, Ioffe, Dougie large have created within the Receivable as well. Creative. The accounting shell game: moving fraud (abusive naked shorts) from bucket to bucket.

The 1Q2020 10Q

<https://www.sec.gov/ix?doc=/Archives/edgar/data/1592386/000159238620000006/virtufinancial03-31x20.htm>

Inline XBRL Viewer - SEC

The Inline XBRL Viewer allows a user to quickly and easily review details of the tagged information in an Inline document by automatically placing a top and bottom highlight border around each tagged numeric fact and left and right border for each block tagged fact.

www.sec.gov

pg 23.

Buckets total \$2.562,721 BILLION

the 2Q2020 10Q

<https://www.sec.gov/ix?doc=/Archives/edgar/data/1592386/000159238620000009/virt-20200630.htm>

pg 24

Buckets total \$2.441,283 BILLION

The FRAUD (please see the record Janey).

ALL of the receivable items are related to SETTLEMENT.

Certain items within the receivable: buckets: would zero out within days IF VIRT was in compliance with the Securities LAWS: Close out requirements of Rule 204. So, isn't it beyond amazing THAT: although there was

some change in certain buckets AND that the amounts were zeroed out within days of March 31, 2020 ONLY to end the quarter June 30, 2020 a mere \$121.438 MILLION difference from the March 31, 2020 ending balance??????

That is absolutely f'n amazing: \$2.562,721 BILLION zeroed out from March 30, 2020 THEN a \$2.441.283 balance at June 30,2020. Well, the SEC does believe in "penny stock trading fairies" too.

Nope. Not penny stock trading fairies. AND VIRT didn't zero out :FAILED to SETTLE BILLIONS \$\$ in transactions. This massive fraud is due to NEVER closing/covering as is mandated by LAW. SEC, ongoing, massive fraud on the public. Classic bucket shell game. A la FCM and Reverse mortgages.

NOTHING has changed thanks to SEC corruption and obstruction while screwing whistleblowers like me.

The massive NITE accounting fraud facilitated by the SEC that facilitates the ongoing fraud on the public the SEC is mandated to protect.

CLEARLY, IRREFUTABLY: NITE is and always has been a criminal entity. ILLEGAL NAKED SHORTING drives trading profits at NITE. ALWAYS has. Janey, please post Jay Clayton AND Ms Mehraban NITE conflict disclosures. No doubt, Dougie large will see this e mail the same way the grossly corrupt SEC has disclosed my information to NITE for the last 10 years. NITE is GROSSLY insolvent TODAY August 18,2020.

Cheers!

Christopher J Dilorio

Whistleblower

[REDACTED]
[REDACTED]

From: Chris Dilorio <[REDACTED]>

Sent: Tuesday, August 11, 2020 6:53 AM

[REDACTED]

Subject: Fw: Formal appeal for denial covered action 2015-016/ Knight TCR & Appendix

Janey, Hoecker et al

SEC criminal obstruction virtually real time.

EFTA00039745

SEC.gov | SEC Charges Interactive Brokers With Repeatedly Failing to File Suspicious Activity Reports

The Securities and Exchange Commission today announced that Interactive Brokers LLC will pay an \$11.5 million penalty to settle charges it repeatedly failed to file Suspicious Activity Reports (SARs) for U.S. microcap securities trades it executed on behalf of its customers.

www.sec.gov

SECNY: Lara Shalov Mehraban. Ms Mehraban, I've asked this before: Was Dougie "Large" Cifu your boss at Paul Weiss? The IBKR "complaint" is getting very close to your former boss/colleague isn't it?

Questions Ms Mehraban doesn't want the public to see:

Her former boss/colleague Dougie "Large" Cifu hired Alex Ioffe as VIRT CFO in 2019. From 2003-2019 Ioffe was CFO at IBKR. INCLUDING the period covered in Ms Mehraban's complaint.

Not filing SAR's, Microcap securities, AML red flags. No kidding. WHY are the securities un named? WHO was ultimate executing BD/MM?

As self clearing Ms Mehraban, isn't Knight/KCG/VIRT (Cifu): NITE the LARGEST clearing agent of microcap securities? How many SAR's coming out of your former boss executing BD/MM?

Per my TCR: NONE. ZILCH. NADA. How do I know that?

When would the criminal enterprise NITE which is run by Ms Mehraban's former Paul Weiss boss/colleague Cifu file a SAR:

BEFORE

or

AFTER trading billions of shares?

Did NITE Compliance rely on IBKR/Ioffe compliance? That would be a violation wouldn't it?

Ms Mehraban is the poster child of SEC corruption and criminal obstruction while screwing whistleblowers like me. Virtually real time in August 2020. Very much an ONGOING and massive fraud on the investing public.

Ms Mehraban, please pass along my warmest regards to your former Paul Weiss boss/colleague Dougie "Large". No doubt you "chat" often.

The record is overwhelming AND irrefutable.

Cheers!

Christopher J Dilorio

Whistleblower

[REDACTED]

[REDACTED]

From: Chris Dilorio <[REDACTED]>

Sent: Monday, August 10, 2020 8:32 AM

[REDACTED]

[REDACTED]

Subject: Fw: Formal appeal for denial covered action 2015-016/ Knight TCR & Appendix

Janey, Hoecker et al

speaking of NO 8K, recall the extensive record for the criminal/insolvent/fraud on the public

Knight/KCG/VIRT:NITE

The record Janey: Clayton/Sull Crom/Fishman "sale" of FCM business to other criminal firm Wedbush with NO 8K

3Q2014 10Q

<https://www.sec.gov/Archives/edgar/data/1569391/000156939114000013/kcg2014093010-q.htm>

KCG then CFO Bisgay resigned with 2 weeks left in the quarter and didn't certify the financials. WHO certified along with Coleman? Sean P GALVIN.

Cifu, Viola, Urban, Hutchins et al getting the fraud band back together

<https://finance.yahoo.com/news/virtu-financial-announces-changes-finance-105100941.html>

WHY would "Cutting edge technology firm" VIRT want to go with a guy who knows how to run the books at low as low tech gets OTCM cash trading firm Knight/KCG? The core business at Knight/KCG/VIRT: NITE is and always has been: abusive naked shorting OTCM (and other) publicly traded shells to facilitate money laundering
Here glitchy glitchy

Cheers!

Christopher J Dilorio

Whistleblower

[REDACTED]
[REDACTED]

From: Chris Dilorio <[REDACTED]>

Sent: Friday, August 7, 2020 6:20 AM

[REDACTED]

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight TCR & Appendix

The SEC facilitated fraud on the public continues unabated. MORE irrefutable evidence of SEC criminal obstruction while screwing whistleblowers like me.

A direct result of this ongoing massive fraud on the public.

After NITE reported its 1Q2020 results I again again, again, like the last 10 years, alerted the grossly corrupt SEC to the massive accounting fraud at NITE as a direct result of abusive naked shorting.

Per my 2013 TCR Janey, Hoecker, Jay et al:

NITE is in a constant state of insolvency as a result of illegal, criminal, abusive naked shorting OTCM money laundering shells. This illegal activity drives trading revenue at NITE. This illegal activity is and ALWAYS has been the core business at NITE. This very profitable albeit illegal activity is WHY Sull Crom client KCG was bought by Virtu. This illegal activity is WHY NITE has been repeatedly bailed out by GS,BX,JEF, JPM and the SEC. The receivable is where NITE books naked short fails as a result of self clearing. NITE has no intention of closing/ can't close these naked short positions. NOT a legit asset. Further, the receivable isn't a legit asset NITE can convert to cash for its own use. There are prior commitments on these "assets": SETTLEMENT. In 1Q2020, the NITE receivable grew to \$2.5 BILLION. UP 90% from December 2019.

https://www.sec.gov/Archives/edgar/data/1592386/000110465920057660/tm2018404d1_ex99-1.htm

SEC.gov | HOME

Exhibit 99.1 . Virtu Announces First Quarter 2020 Results . NEW YORK, NY, May 7, 2020 - Virtu Financial, Inc. (NASDAQ: VIRT), a leading provider of financial services and products that leverages cutting edge technology to deliver innovative, transparent trading solutions to its clients and liquidity to the global markets, today reported results for the first quarter ended March 31, 2020.

www.sec.gov

Per the SEC reviewed 8k filing this am Aug 7, 2020 NITE reported 2Q2020 earnings. showing the receivable roughly flat with 1Q2020 at 2.44 BILLION

https://www.sec.gov/Archives/edgar/data/1592386/000110465920091707/tm2026789d1_ex99-1.htm

These are NOT "assets". More accurately, these are LIABILITIES. Massive accounting fraud. After moving these fraud "assets" to the appropriate liability classification, NITE tangible book value is GROSSLY insolvent. The SEC has obstructed my allegations for several years while allowing NITE to write down this structural liability on

more than 1 occasion. Further, sell side analysts at the guidance of Cifu et al never question these EGREGIOUS balance sheet issues. AND, with the grossly corrupt SEC blessing, Cifu et al never disclose insolvency in any SEC filing OR investor presentation.

After dismal April/May REPORTED OTCM volumes on the FINRA now controlled website, June saw a dramatic spike in share volumes.

The Top 25 OTCM money laundering shells by share volume in June 2020 and share price

PLYZ	.00015
PVDG	.0008
RTON	.00015
GRST	.001
RNVA	.76 (rev split)
OZSC	.0049
EWLL	.0002
VSYM	.0012
OPTI	.14755
AFOM	.0001
SIML	.00025
IGEN	.0084
XMET	.0002
GTEH	.0001
ABCE	.0003
TSOI	.007
NTRR	.0014
GFTX	.0005
LVXI	.0003
SGMD	.0024
INQD	.002765
RBNW	.0005
TLSS	.0238
TPTW	.07215
HYSR	.0328

Combined price approximately \$1

How do stocks trade to trip zeroes? More buyers than sellers?

Covering/closing out naked short fails shouldn't be an issue. ONLY explanation: abusive naked shorting: MANIPULATION. NOT Bona Fide market making.

As a direct result of this massive, ongoing SEC facilitated fraud on the public, ABSOLUTELY NOTHING HAS CHANGED.

The record is irrefutable: SEC criminal obstruction while screwing whistleblowers like me to facilitate a MASSIVE, ongoing fraud on the public. Key facilitator: Jay Clayton/Jared Fishman: Sull Crom

Cheers!

Christopher J Dilorio

Whistleblower

[REDACTED]
[REDACTED]

From: Chris Dilorio <[REDACTED]>

Sent: Thursday, July 30, 2020 9:31 AM

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight TCR & Appendix

MORE SEC corruption/obstruction/screwing whistleblowers like me.

Per my 2013 TCR attached Janey, we know that Schwarzman/Blackstone has played a key role in perpetuating the criminal entity Knight,KCG,VIRT:NITethe Sull Crom client.

We also know Trump and Schwarzy are BFF's. Schwarzy is also connected to Kushner and Epstein.

Schwarzy is most definitely on the SEC's "Do not investigate List"

A stroll down the record Janey: Around the same time as the SEC/BX/JEF/GS et al August 1 2012 NITE "trading glitch", Schwarzy/BX were key advisers to bondholders of Eastman Kodak and to the company also. Jason New: Blackstone was re elected to the KODK BoD in May 2020.

https://www.sec.gov/Archives/edgar/data/31235/000156459020027039/kodk-8k_20200520.htm

Then the Pumper/Grifter in Chief Trump goes out wide and far with this absolutely incredible news:

The camera/film company Eastman Kodak is now going to be the US savior in pharma ingredients supply chain. This is a page out of the penny stock grifter playbook. This is what happens when we have a WH full of money laundering shell grifters. So, what has been the result of this incredible pump/transformation? KODK has gone from 2 to 90 back to 40.

As is typical Trump/grifters/ and his criminal Clayton led SEC: the public hasn't seen a 8K filed by KODK to detail this incredible "transformation". The SEC has given its blessing to yet ANOTHER Trump/Grifter/Bag Men P&D. in KODK, FBO Trump BFF and Sull Crom client: Knight "savior" Schwarzy/BX. Had the grossly corrupt SEC investigated my claims instead of obstructing them and screwing me, MAYBE Schwarzy/BX would have thought twice about their latest gift: KODK. We know that Schwarzy is also a prolific GOP donor.

F'n criminals

Cheers!

Christopher J Dilorio

EFTA00039750

Whistleblower

[REDACTED]
[REDACTED]

From: Chris Dilorio <[REDACTED]>

Sent: Thursday, July 30, 2020 6:33 AM

[REDACTED]

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight TCR & Appendix

Still MORE IRREFUTABLE evidence of SEC criminal obstruction and corruption while screwing whistleblowers like me. Per the record Janey: Trump PA campaign Mgr David Urban on the BoD of #1 money laundering shell trader and Clayton/Sull Crom client NITE. Urban also on the BoD of money laundering shell: Pakastani/Canadian pot company w/ 200k in revenue FSD Pharma:HUGE. Today HUGE is up more than 100% on "news" it will pivot away from growing pot in Canada to "developing" a pot based cure for Covid. A money laundering shell. Of course, the grossly corrupt SEC has approved a \$20 million public offering for Urban/Trump: HUGE SEC facilitated P&D to facilitate money laundering

<https://www.sec.gov/Archives/edgar/data/1771885/000106299320003258/formsuppl.htm>

AGAIN, the SEC is a criminal organization facilitating criminal activity and protecting criminals at the expense of the public it is MANDATED to protect while screwing whistleblowers like me.

The record is extensive.

Cheers!

Christopher J Dilorio

Whistleblower

[REDACTED]
[REDACTED]

EFTA00039751

From: Chris Dilorio <[REDACTED]>

Sent: Tuesday, July 28, 2020 7:48 AM

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

STILL MORE OVERWHELMING evidence to support my extremely serious allegations that the SEC is a criminal organization, run by criminals, to support criminal activity while screwing whistleblowers like me. Farkas: Michael: is a prolific Bag Man well known to the SEC. Farkas chose a Jaclin money laundering shell INTENTIONALLY. Blink Charging (BLNK) is ANOTHER SEC facilitated fraud on the public the SEC is MANDATED to protect.

Other Farkas money laundering shell: i Incubator

<https://www.sec.gov/cgi-bin/browse-edgar?CIK=1044693>

As is SOP for the grossly corrupt SEC: Revoked AFTER this massive fraud on the public was complete

<https://www.sec.gov/litigation/admin/2009/34-60013.pdf>

ALSO SOP for the corrupt SEC: No mention of Farkas and his controlling i Incubator entities in the complaint

<https://www.sec.gov/Archives/edgar/data/1044693/000104653200000261/0001046532-00-000261-index.htm>

<https://www.sec.gov/Archives/edgar/data/1044693/000104653200000265/0001046532-00-000265-index.htm>

<https://www.sec.gov/Archives/edgar/data/1044693/000104653200000263/0001046532-00-000263-index.htm>

ALSO missing from the i Incubator complaint: Executing BD/MM of the worthless Farkas certs dumped on the public while the grossly corrupt SEC watched. Those damn "penny stock trading fairies" AGAIN!
NOPE.

BLNK never should have happened. Farkas, his NETE CFO, Keener, Nordlicht, etc etc should have been shut down LONG AGO

Cheers!
Christopher J Dilorio
Whistleblower

From: Chris Dilorio <[REDACTED]>

Sent: Thursday, July 23, 2020 5:59 AM

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

The grossly corrupt SEC response to whistleblower OVERWHELMING evidence of money laundering ,manipulation, and fraud: MY INFORMATION has been remarkably consistent over the last 9 years++:
Obstruct, cover up, facilitate illegal activity at the expense of the investing public it is sworn to protect while screwing whistleblowers like me.

BLNK: A KNOWN Jaclin money laundering shell. Rev merger with a KNOWN Bag Man: Michael Farkas who was the largest shareholder of ANOTHER money laundering shell: SkyWay but somehow escaped the SEC investigation. With Board members like Engel: Drexel, Scigliano: Acies: NETE a CFO:New from NETE. A known to the SEC Bag Man: Keener who the SEC has kept up and running for YEARS since being BARRED (Not Exactly) by Industry SRO FINRA.

In addition to that name Farkas: ANDREW/Jonathan Farkas. Trump fundraiser and Epstein: Jeffrey: business partner, this fraud has an added element. So, after receiving my overwhelming evidence with AML red flags too numerous to count, what was the par for the course SEC response: Approved BLNK public offering just several days ago AND with my overwhelming evidence in hand. But, that's not where the corrupt SEC active facilitation of this massive fraud on the public ends. Yesterday, 7/22, BLNK put out a PR linking it to a few hundred charging stations in VA,MD,DC. This pr drove the stock up almost 30% at 1 point and closed 15% higher on almost 8x avg volume. A most certainly "MATERIAL" event. AND an event that required an SEC 8k filing if "DEFINITIVE" as well. No such 8K was filed by BLNK for this pr. This pr therefore must be complete FRAUD intended ONLY to facilitate a massive Pump and Dump on the public. It accomplished its intended fraudulent outcome.

But, back to BLNK fka New Image Concepts: the company
Between Blink and New Image Concepts, BLNK was known as Car Charging Inc

EFTA00039753

https://www.sec.gov/Archives/edgar/data/1429764/000114420414059745/v390669_def14c.htm

This 2014 SEC approved offering also had several red flags of its own. WHOPPERS in fact.
Guess who ELSE was involved in this years in the operating money laundering shell?
Platinum Funds/Nordlicht. With links to Kushner(s) and Trump lawyer Giuliani. Other NY entities, a Columbus OH entity, a Chicago entity, and a Belize entity. Still counting the AML red flags?
The icing on the top of this massive SEC facilitated fraud: ex NM Governor Bill Richardson.
Who, is also linked to Jeff Epstein and his NM Zorro Ranch.

BLNK: money laundering fraud on the public ACTIVELY facilitated by the SEC in July 2020 despite overwhelming whistleblower (me) information. Linked to Milken, Russia, Trump, and Epstein. Of course the 7/22 trading activity NEVER would have happened without willing, executing BD's and MM's like the criminal entity known as Knight, KCG, VIRT: NITE. Which has also been kept up and running by the grossly corrupt SEC despite overwhelming evidence of a massive, ongoing, criminal conspiracy detailed by a whistleblower: me.

Cheers!
Christopher J Dilorio
Whistleblower

[REDACTED]
[REDACTED]

From: Chris Dilorio <[REDACTED]>
Sent: Wednesday, July 22, 2020 8:44 AM

[REDACTED]

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

Greetings grossly corrupt SEC et al
Still MORE SEC facilitated fraud on the public it is mandated to protect:

EFTA00039754

BLNK: Farkas/JMJ/Jaclin/CFO New(NETE) money laundering fraud
today's pr

<https://www.globenewswire.com/news-release/2020/07/22/2065815/0/en/Blink-Charging-Awarded-Grant-from-Virginia-Clean-Cities-to-Place-200-Fast-Level-2-Charging-Stations-Across-the-Mid-Atlantic-Region.html>

Of course, BLNK didn't file an SEC reviewed 8K for this material, definitive agreement that has the stock up 27% on 5x normal volume at 10:30 EST

In fact, the last filing with the SEC by BLNK was actually the SEC declaring effective a public offering of securities on 7/15/20. 1 week ago today.

MORE SEC facilitated fraud on the public.

Cheers!
Christopher J Dilorio
Whistleblower

[REDACTED]
[REDACTED]

From: Chris Dilorio <[REDACTED]>
Sent: Tuesday, July 14, 2020 3:31 PM

[REDACTED]

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

EFTA00039755

OH JOHNNY!

<https://www.reuters.com/article/bc-finreg-fbi-laundering-private-equity-idUSKCN24F1TP>



FBI concerned over laundering risks in private equity, hedge funds - leaked document - Reuters

The U.S. Federal Bureau of Investigation believes firms in the nearly \$10-trillion private investment funds industry are being used as vehicles for laundering money at scale, according to a leaked ...

www.reuters.com

Janey,

Even though you admit not distributing my information within the SEC, I was busy distributing it myself to others.

Carl baby, I'm afraid this means your first "investigation" of my complaints to you wasn't exactly "thorough" as I've been saying for years.

Shall I point out the pages for you?

Blackstone wanted to buy NITE but only AFTER their SEC/JEF et al orchestrated August 1 2012 "glitch" "luckiest f'ers" on the Street

<https://www.businessinsider.com.au/blackstone-dodged-a-bullet-with-knight-capital-2012-8>



WHEW: Blackstone Almost Bought Knight Capital Before Its Stock Collapsed

One company is breathing a sigh of relief after a trading glitch sent shares of Knight Capital Group from more than \$10.30 to nearly \$2.50 last week.

www.businessinsider.com.au

From my TCR you admit never distributing Janey

<https://www.reuters.com/article/us-wealth-summit-ubs-blackstone-idUSTRE6A055020101101>



UBS brokerage's McCann sees more Blackstone ties - Reuters

UBS , rebuilding a brokerage hard-hit by the financial crisis, lately has been mingling in some good company: Blackstone Group LLP.

www.reuters.com

The UBS award application I sent to Janey TEN TIMES from a commercial fax machine:
ALSO MY INFORMATION

<https://www.sec.gov/enforce/34-84828-s>

SEC.gov | SEC Charges UBS Financial Services Inc. with Anti-Money Laundering Violations

ADMINISTRATIVE PROCEEDING File No. 3-18931. December 17, 2018 - The Securities and Exchange Commission today announced settled charges against broker-dealer UBS Financial Services Inc. for failing to report suspicious transactions in customer accounts. UBS agreed to pay a \$5 million civil penalty to resolve the SEC's charges, and separately agreed to pay \$10 million to the U.S. Treasury ...

www.sec.gov

y'all are gonna be FAMOUS!

Cheers!

Christopher J Dilorio

Whistleblower

From: Chris Dilorio <[REDACTED]>

Sent: Tuesday, July 14, 2020 12:34 PM

[REDACTED]

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

MORE SEC corruption/obstruction
ANOTHER Jaclin money laundering shell:

https://www.sec.gov/Archives/edgar/data/1449527/000121390008002174/fs1_prcomplete.htm

YESDtc Holdings fka PR Complete

<https://www.sec.gov/cgi-bin/browse-edgar?CIK=1449527>

MORE related entities to my claims:

Bill Scigliano: Chairman BoD

Scigliano was also a Director at Oleg Firer's revoked but still very much up and running in MA: Acies Corp. Acies was incorporated by His Eminence with a NY address of 14 Wall Street: Rovt: Allied Wallet: WireCard. Jaclin and Oleg related entities/people: Money laundering shells. Is the grossly corrupt SEC regretting their Jaclin complaint which was a cover up for much larger criminal activity: MY CLAIMS?

But there's more.

The SEC also brought "more coverup than complaint" In Frost, Honig, Alpha, Stetson et al. The SEC Knows who else was involved in the Jaclin money laundering shell PRComplete/YESDtc:

Barry Honig/GRQ

<https://www.sec.gov/Archives/edgar/data/1449527/000152153612000023/0001521536-12-000023-index.htm>

So, Jaclin money laundering Shells and Honig too?

Gee, maybe Bag Men Honig, Keener, Scigliano etc KNEW these were money laundering shells?

Who was the executing BD/MM converting all these billions of worthless Jaclin, Ironridge, JMJ, Farkas, Honig etc etc certs into real money?

The SEC response: "penny stock trading fairies". NOPE: NITE

How is it possible that there is NO reference to AML in ANY of these SEC complaints?

Because the SEC outsourced BD compliance with the BSA to industry advocate FINRA. DUH

Then, there's the Jaclin money laundering shell New Image/BLNK. Gee, wonder if Farkas of money laundering shell Skyway, JMJ/Keener: money laundering shells in my claims, Engel: Drexel, Jonathan New NETE CFO, etc knew BLNK was/is a money laundering shell too.

His Eminence Firer is a prolific Bag Man. I've been telling the SEC that for years.

Janey, update my NETE and AQR TCR's. You know, for the record. Several entities in my TCR's linked to Jaclin's shell factory. Including NITE.

I've asked this many times Janey, Jay, Hoecker et al:

WHAT EXACTLY DOES THE NITE COMPLIANCE DEPARTMENT DO EXACTLY?

Other than looking the other way while they naked short publicly traded shells to facilitate money laundering that is

Cheers!

Christopher J Dilorio

Whistleblower

[REDACTED]

[REDACTED]

From: Chris Dilorio <[REDACTED]>

Sent: Monday, July 13, 2020 10:50 AM

[REDACTED]

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

Janey, Hoecker, Jay et al

still MORE SEC attempts to cover up illegal activity at the expense of the public it is mandated to protect.

The SEC latest Rule change proposal

<https://www.sec.gov/news/press-release/2020-152>

SEC.gov | SEC Proposes Amendments to Update Form 13F for Institutional Investment Managers; Amend Reporting Threshold to Reflect Today's Equities Markets

The Securities and Exchange Commission today announced that it has proposed to amend Form 13F to update the reporting threshold for institutional investment managers and make other targeted changes.

www.sec.gov

Will exempt 90% of current 13F filers from future equity holdings disclosures.

WHO does that benefit? Certainly not the public the SEC is mandated to protect. LESS transparency still for the likes of Keener, Sason, Asher/Kramer, IBC, Ironridge/Coulston, Alpha, Dutchess, Crede, etc etc etc

Costs to file: pocket change

<https://www.netacn.com/Service.aspx?id=dLfmwmZHCKOsIL-sP3V8Dw>

Form 13F EDGAR Filing Agent Service :: Advisor Consultant Network

ACN will compile your 13F Report and act as your Filing Agent in order to submit the report to EDGAR. Send us your Holdings List, we compile the Form 13F Report and send you a Proof for your review and approval. Upon your approval we will submit the report to EDGAR. You will receive an email notification as will ACN that the report has been accepted.

www.netacn.com

So, WHY does the SEC want LESS transparency for the investing public it is mandated to protect?

The SEC is bought and paid for by criminals.

Cheers!

Christopher J Dilorio

Whistleblower

From: Chris Dilorio <[REDACTED]>

Sent: Wednesday, July 8, 2020 9:35 AM



[REDACTED] <[REDACTED]>
Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

Janey, Hoecker et al,

Is Trump prolific Bag Man Jonathan Farkas related to Bag Man Michael Farkas: Skyway largest shareholder:
REVOKED

<https://www.hollywoodreporter.com/rambling-reporter/inside-hamptons-fundraisers-netted-trump-12m-election-1230690>



Inside the Hamptons Fundraisers That Netted Trump \$12M for Re-election | Hollywood Reporter

The numbers are in and President Donald Trump's quick trip to the Hamptons on Friday raked in \$12 million for his re-election campaign as his Republican allies were quick to declare it a win ...

www.hollywoodreporter.com

Now Michael Farkas is CEO of Jaclin money laundering shell New Image Concepts/Blink charging
How did Farkas (Michael) escape the SkyWay SEC complaint?

<https://www.sec.gov/litigation/complaints/2009/comp20960.pdf>

Would explain the Milken/Drexel flunkie Engel on the BLNK BoD as well.

Also explains why the grossly corrupt SEC let Bag Man JMJ/Keener up and running in 2020 and the Crede/Milken/Putin etc NETE CFO New now CFO at BLNK

Some BLNK/Trump/rinsing. With help from "issuer/bag man funded research" Zacks aka Seethroughequities 2.0. Russian money?

Cheers!

Christopher J Dilorio

Whistleblower
[REDACTED]

From: Chris Dilorio <[REDACTED]>

Sent: Tuesday, July 7, 2020 6:09 AM

[REDACTED]

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

Janey,

MORE EXTRAORDINARY SEC corruption and criminal obstruction designed to protect criminals and screw whistleblowers like me. Despite my very generous 4 day offer to produce the entire record which is the basis of my award application/denial/appeal AND REQUIRED by the statute I have referenced:

240.21F-12 "Materials that may form the basis of an award determination and that may comprise the record on appeal", The several hundred e mails I have sent you, Hoecker et al MUST be part of this record. Janey, you failed to produce this record. As I made clear: my 6/23/2020 emails to you Hoecker, SEC commissioners were merely re re re sent previously sent e mails: the record. Further, my 6/23/2020 e mail: Formal appeal for preliminary denial covered action 2015-016 Knight Capital & Appendix was merely a summary of several hundred e mails sent to you, Hoecker et al. These e mails SHOULD be the record. You failed to produce the record. Which begs the question: WHAT "record" was used to determine the SEC preliminary denial exactly IF the SEC can't produce the record? The preliminary denial was completely fabricated and must be reversed. But, it doesn't end there: per my 6/23/2020 summary based on several hundred e mails sent to the SEC, the RECORD of EXTRAORDINARY corrupt obstruction designed to protect criminals and screw whistleblowers is not confined to Opco,NITE,UBSS,Sason,Keener etc etc etc. I have filed 2 TCR's with the OWB related to the money laundering/transaction

laundering/Putin/Rakishev/Trump/Kushner/Alfa/Crede/Peizer/Milken/Hapoalim/SBNY/CardWorks/ESQ/WireCard/AQR etc etc etc fraud known as Net Element. For YEARS the SEC has been in possession of not just my TCR's but HUNDREDS of e mails supporting my TCR's comprising the extensive record. Here again, the SEC is covering up a MASSIVE fraud perpetrated on the public and well within even the grossly corrupt SEC ability to shut down the fraud IF they had used my information to execute its mandate to do so. Instead, the SEC obstructed a thorough investigation. Per my previous e mails: the record: NETE claimed to be a payment processing entity. Claiming further to process BILLIONS of dollars worth of transactions every year. Its subsidiary Pay Online is linked to the massive fraud Wire Card. How's the SEC Wire Card investigation coming along? For years, based on my extensive financials research and other research, I pleaded and pleaded with the SEC to shut down this massive fraud. They did not. email after email. Year after year I wrote the SEC "NETE is a money laundering/transaction laundering fraud". Rather than shut it down, the SEC with the help of NASDAQ allowed fraud public offerings by Crede/Peizer/Milken related entities: Esousa and Cobblestone and a reverse split so NETE could keep its NASDAQ listing. The balance sheet has been grossly insolvent for years: goodwill. ALL of my allegations were confirmed when NETE decided to "unlock value in its payment processing" business by doing a reverse merger with a CA EV "manufacturer" started by a musician. This fraud transaction is quite common in money laundering shell land dominated by NITE/VIRT. The SEC cover up of criminal activity while screwing whistleblowers:ME: The "payment processing business" is to be "sold". Related of course was the SEC cover up of criminal activity while screwing whistleblowers: ME: The Goldman/Sull Cromm advised purchase by ALLY of CardWorks: Merrick Bank: NETE and then the recent unwinding of this fraud transaction. No doubt the brain child of Chair Clayton and his Sull Cromm colleague Jared Fishman who has played a key role in keeping the criminal entity NITE/VIRT up and running.

NETE/Mullen: "here glitchy glitchy" cover up. But, who the hell would EVER touch the massive fraud: NETE? Only another fraud: Mullen.

Mullen doesn't "manufacture" ANYTHING. Mullen is simply a car dealership.

The K50 EV is manufactured in China by Qiantu a subsidiary of CH-Auto. Qiantu/CH have a production facility in China. There will be no Mullen "production" of EV vehicles in Washington or anywhere else in the US.

But, the SEC facilitated fraud doesn't end at protecting criminals and screwing whistleblowers: ME. Per my TCR attached, there is a well orchestrated eco system of fraud. Including "issuer/bag man funded research" that facilitates P&D. In fact, on 11/8/2018 the SEC brought a complaint against an entity I cited in 1 of my emails to the SEC: the record: known as SeeThroughEquity

<https://www.sec.gov/litigation/complaints/2018/comp-pr2018-259.pdf>

Seethruequity, LLC, Ajay Tandon, and Amit Tandon

THE DEFENDANTS 6. SeeThruEquity, LLC is a Delaware limited liability company that was co-founded in 2011 by brothers Ajay Tandon and Amit Tandon.

www.sec.gov

SeeThroughEquity was engaged in a Pump and Dump promotion of NETE in April and August 2018

<https://www.netelement.com/press-releases/release-content/1062906#.XwRXEOWSnIV>



SeeThruEquity Issues Update on Net Element, Inc.

NEW YORK, NY / ACCESSWIRE / April 10, 2018 / SeeThruEquity, a leading independent equity research and corporate access firm focused on smallcap and microcap public companies, today announced that it has issued an update on Net Element, Inc. (). The note is available here: NETE April 2018 Update Note. Net Element, Inc. (NASDAQ: NETE, "Net Element") is a global financial

www.netelement.com

<https://www.netelement.com/press-releases/release-content/10734671#.XwRXGuWSnIV>



SeeThruEquity Issues Update on Net Element, Inc.

NEW YORK, NY / ACCESSWIRE / August 6, 2018 / SeeThruEquity, a leading independent equity research and corporate access firm focused on smallcap and microcap public companies, today announced that it has issued an update on Net Element, Inc. (). The note is available here: NETE August 2018 Update Note. Net Element, Inc. (Nasdaq CM: NETE, "Net Element") is a global financial

www.netelement.com

So, the SEC SeeThroughEquity complaint acknowledges the fraud associated with NETE. Well orchestrated. This P&D campaign was part of the 2 fraud offerings : Esousa and Cobblestone: I alerted the SEC to. Who PAID for the SeeThrough P&D? Crede/Peizer/Esousa/Cobblestone?

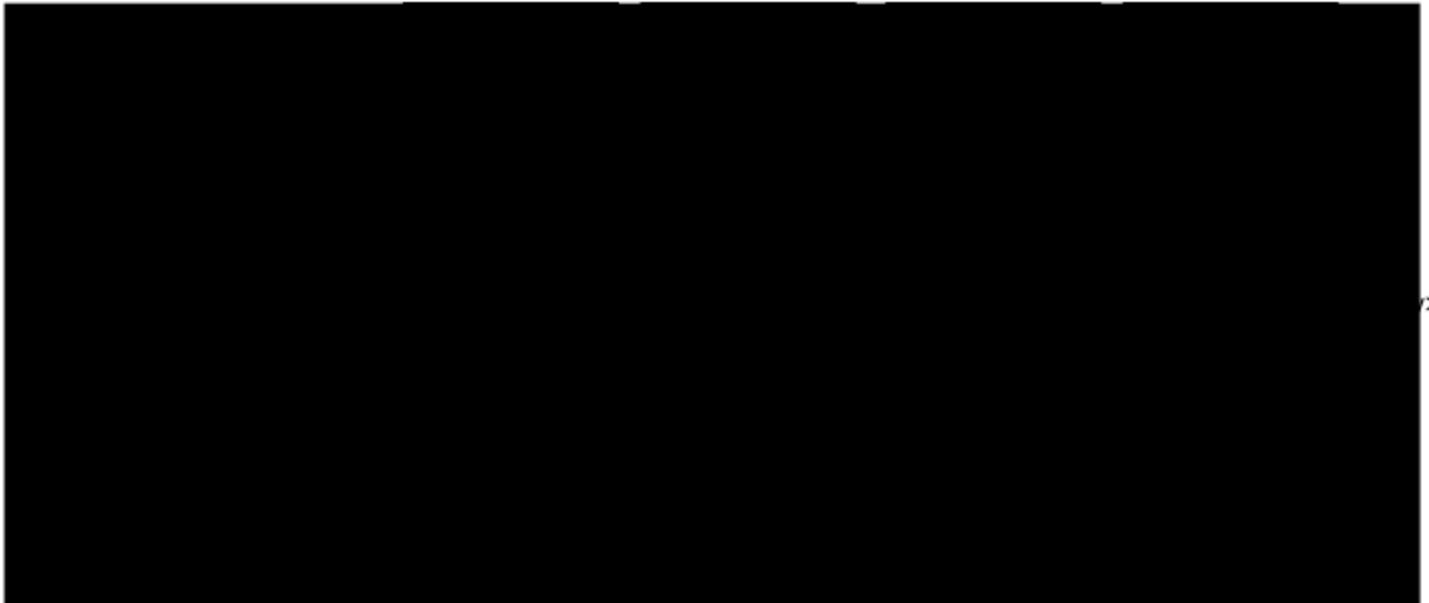
The cherry on top of the SEC corrupt obstruction: NETE was still in business in 2020 to receive taxpayer Cares Act money.

A summary of the record.

Janey, Hoecker et al,
Please update my Net Element and AQR TCR's
Cheers!
Christopher J Dilorio
Whistleblower
[REDACTED]

Not just irony but a massive fraud on the

From: Chris Dilorio <[REDACTED]>
Sent: Tuesday, June 30, 2020 1:01 PM



Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

Janey,
the purpose of your 5 years in the waiting PRELIMINARY denial of my OpCo Award application could not be any more clear: run the clock out and protect NITE, UBSS, Magna et al while denying me rightful compensation. But, As I have repeatedly told you, Hoecker, your colleagues: the last overt act of this vast conspiracy has not yet occurred:

NITE/VIRT is insolvent today 6/30/2020 as a direct result of the SEC facilitated fraud on the public which is and always has been the core business at NITE/VIRT: Abusive naked shorting publicly traded shells to facilitate money laundering. The public is STILL at risk. The SEC has facilitated NITE intentionally misleading the public as to the true nature of its business. The SEC still facilitates this massive fraud on the public while it intentionally misleads the public there is no naked shorting because the SEC authorized the DTCC to create the illegal, shadow clear mechanism Obligation Warehouse (OW) so NITE's criminal activity can continue and it can circumvent close out REQUIREMENTS of Rule 204 of Reg SHO. ALL very much ongoing in June 2020 as a direct result of the SEC (OWB/Hoecker/Enforcement etc etc) criminal obstruction and ACTIVE facilitation of the criminal enterprise known as Knight/KCG/VIRT: NITE.

Clayton never disclosed his Sull Crom/Fishman/NITE conflicts. He must step down from the SEC IMMEDIATELY until a criminal investigation can be concluded. NITE must be halted IMMEDIATELY as it still poses a monumental risk to the investing public. FINRA should go back to being a cheerleader as it is just another enabler of this criminal activity. It has NO business enforcing SECURITIES LAWS. It should not be overseeing the OTCM. FINRA fines are a joke and not meant to be a deterrent. INTENTIONALLY siding with criminals over the investing public the SEC is mandated to protect. The cesspool known as the OTCM MUST be shut down. It exists

SOLEY for the purpose of facilitating a massive fraud on the public. The OW must be shut down IMMEDIATELY so the public can see just how pervasive naked short selling: MANIPULATION really is. EVERYONE at the SEC who has had contact with my information MUST resign/be terminated IMMEDIATELY. ALL of the AQR blank check shells must be shut down IMMEDIATELY as they pose a serious national security risk. AQR MUST be shut down IMMEDIATELY.

Certainly not exhaustive BUT a good start

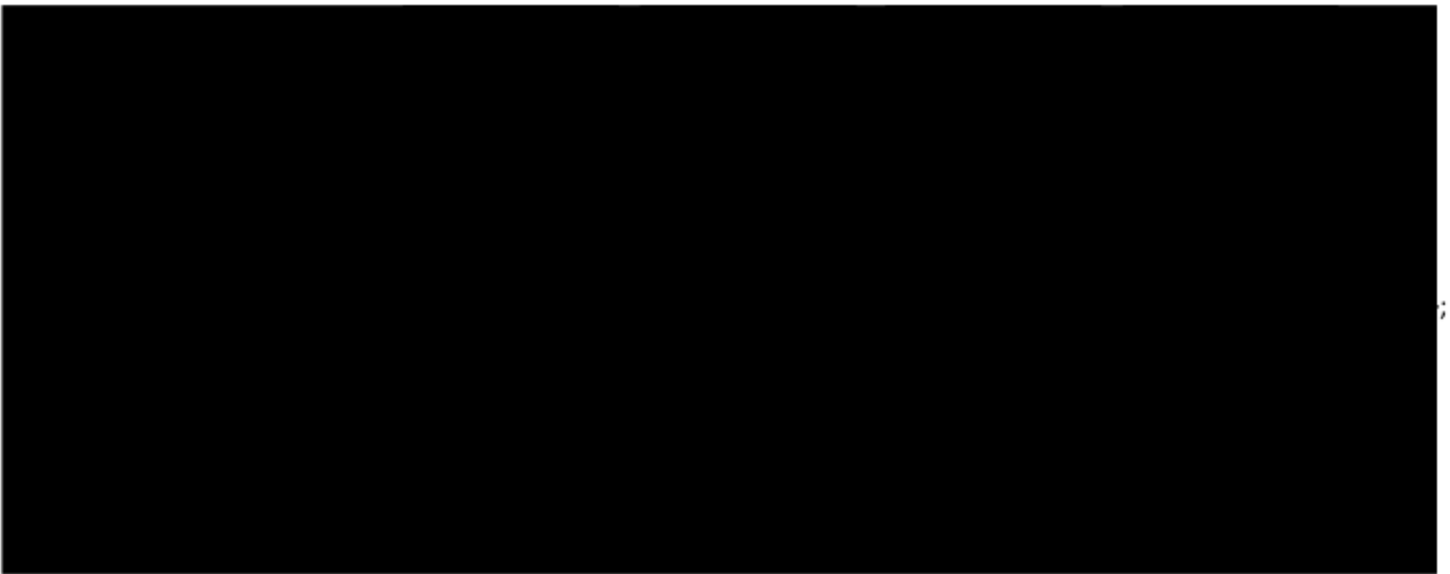
Cheers!

Christopher J Dilorio

Whistleblower
[REDACTED]

From: Chris Dilorio <[REDACTED]>

Sent: Tuesday, June 30, 2020 7:36 AM



Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

Janey,

please add the following info to my appeal of your preliminary denial of my Opco award.

More evidence the SEC is using/has used my information to both bring complaints and protect/obstruct complaints. Again, you, McKessy, Hoecker have been in possession of my 2013 TCR filed with Berger for several years. In addition to hundreds of e mails continuing into 2020 showing irrefutable and overwhelming evidence to support my allegations.

Highlighted in my attached TCR and related to my Opco Award application: Joshie Sason/Hanover/Magna: CGFIA, IMDS, NewLead, FreeSeas, PRTH etc etc etc. The SEC Sason/NewLead complaint is also my information as I filed separate but related NewLead, and FreeSeas TCR's with your office. The SEC complaint: Sason assignments: bogus notes. NO SHIT? Really? detailed by me. In addition to Bag Man Sason/Hanover/Magna, I detailed the illegal activity of Bag Man Justin Keener/JMJ in my 2013 TCR. Keener was the customer in the FINRA World Trade Financial complaint.

<https://www.finra.org/media-center/news-releases/2013/finra-fines-three-firms-900000-inadequate-anti-money-laundering>

FINRA Fines Three Firms \$900,000 for Inadequate Anti-Money Laundering Programs | FINRA.org

WASHINGTON - The Financial Industry Regulatory Authority (FINRA) announced today that it has fined three firms a total of \$900,000 for failing to establish and implement adequate anti-money laundering (AML) programs and other supervisory systems to detect suspicious transactions.

www.finra.org

Related to the billions of OTCM money laundering shells traded through World Trade, the BD SRO FINRA requested information from Keener related to his assignments and acquisition of bogus convertible notes including bank statements to prove the notes weren't bogus. Keener told FINRA to 'F Off'

https://www.finra.org/sites/default/files/OHODecision/p182993_0_0.pdf

FINANCIAL INDUSTRY REGULATORY AUTHORITY OFFICE OF HEARING OFFICERS

5 distributions of securities in violation of Section 5 of the Securities Act of 1933. Tr. 158, 179-180.6 On September 22, 2011, FINRA staff served a request on Keener, pursuant to FINRA

www.finra.org

FINRA barred Keener/JMJ in 2013 as a "Bad Actor"

The SEC was certainly aware of the FINRA action

<https://www.sec.gov/litigation/opinions/2012/34-68014.pdf>

As recently as 2019 Bag Man Keener/JMJ was involved in ANOTHER money laundering shell called Blink Charging fka New Image Concepts

<https://www.sec.gov/cgi-bin/browse-edgar?action=getcompany&CIK=0001429764&owner=exclude&count=40&hidefilings=0>

<https://www.sec.gov/Archives/edgar/data/1429764/000114420419004046/0001144204-19-004046-index.htm>

EDGAR Filing Documents for 0001144204-19-004046

Blink Charging Co. (Subject) CIK: 0001429764 (see all company filings) IRS No.: 030608147 | State of Incorp.: NV | Fiscal Year End: 1231 Type: SC 13G/A | Act: 34 ...

www.sec.gov

New Image Concepts was detailed by the SEC in their Jaclin et al "Shell factory" complaint in 2016. PRIOR to Keener involvement.

<https://www.sec.gov/litigation/complaints/2016/comp-pr2016-86.pdf>

Case No. 2:16-cv-03250

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 Case 2:16-cv-03250 Document
1 Filed 05/12/16 Page 1 of 45 Page ID #:1 AMY JANE LONGO, Cal ...

www.sec.gov

But Keener not the only 1 involved who knew New Concept was a money laundering shell.
CEO of Blink is Michael Farkas. SEC knows him well from his Skyway Communications days.
The SEC revoked the registration of Farkas/Skyway in 2007

[https://www.sec.gov/cgi-bin/browse-edgar?
action=getcompany&CIK=0001128723&owner=exclude&count=40&hidefilings=0](https://www.sec.gov/cgi-bin/browse-edgar?action=getcompany&CIK=0001128723&owner=exclude&count=40&hidefilings=0)

The CFO of Blink is Jonathan New. Formerly CFO of the AQR/Crede: Milken money laundering/Transaction
laundering blank check shell: Cazador/Arco: Net Element

A director of Blink is a guy named Donald Engel who worked at Drexel with Milken.
New Concepts was HQ'd in Santa Monica: Milken

But it gets better

the Jaclin shell factory also linked to Honig, Stetson, Alpha Cap, Frost as well

<http://www.teribuhl.com/2019/08/06/honigs-shell-factory-attorney-gregg-jaclyn-barred-as-sec-lawyer/>



Honig's Shell Factory Attorney Gregg Jaclin Barred as SEC lawyer - TERI BUHL

Your Voice. High Times Admits SEC Filing is Wrong: Stormy Simon
off the Board - L.A. Cannabis News on Text messages show
Cannabis investors Defrancesco & Serruya allegedly Colluded
with Clarus Securities' Christodoulis in Multiple Stocks; High
Times Admits SEC Filing is Wrong: Stormy Simon off the Board -

www.teribuhl.com

Where the SEC said multi billionaire Frost risked ALL to make a few million. NO, Frost, Alpha (also in my attached
TCR), Stetson, Honig were LAUNDERING. Frost bought Ladenburg from Milken flunkie Icahn AFTER Icahn rolled
Gruntal int Ladenburg. Gruntal: Icahn, Sater, SAC, Feinberg et al: Milken

The SEC intentionally omitted a Honig/Stetson shell from this complaint:

Millenium Bio/Inergetics

linked to Trump Cleveland fundraiser and healthcare fraud felon: Brian Collieran

In typical SEC "cover up", revoked the Millenium/Inergetics registration in 2019.

[https://www.sec.gov/cgi-bin/browse-edgar?
action=getcompany&CIK=0000072170&owner=exclude&count=40&hidefilings=0](https://www.sec.gov/cgi-bin/browse-edgar?action=getcompany&CIK=0000072170&owner=exclude&count=40&hidefilings=0)

Finally,

SEVEN F'n Years AFTER FINRA barred (not exactly) Keener/JMJ and my Berger TCR filed with your office Janey,
The SEC is going after Keener/JMJ related to my information AGAIN
17.5 BILLION shares of money laundering penny stocks.

Justin W. Keener d/b/a JMJ Financial (Release No. LR-24779; Mar. 24, 2020)

SEC Charges Unregistered Penny Stock Dealer Litigation Release No. 24779 / March 24, 2020 Securities and Exchange Commission v. Justin W. Keener d/b/a JMJ Financial, No. 20-cv-21254 (S.D. Fla. March 24, 2020)

www.sec.gov

WHO was/were executing BD's/MM's in these billions of shares of worthless Keener/JMJ money laundering shells????

What are odds that bogus note/worthless certs/assignments Sason/Magna would be involved with bogus notes/worthless certs/assignments Keener/JMJ in money laundering shells like IMDS and CGFIA etc) AND CGFIA was detailed by me to the SEC/FINRA AND CGFIA was 1 of the shells in the FINRA Opco AML complaint AND where NITE and UBSS traded billions of shares of CGFIA AND where NITE and UBSS traded billions of shares of IMDS also Now, what are the odds of all of that?

All you have to do is read my attached TCR Janey.

Cheers!

Christopher J Dilorio

Whistleblower

From: Chris Dilorio <[REDACTED]>

Sent: Tuesday, June 23, 2020 4:11 PM

[REDACTED]

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

small typos/corrections:

Mirror trade activity peaked in 1H2014 not 2H2014 and this coincides with OTCM astronomical share volume data in 1Q2014 and 2Q2014 that were expunged from KCG 10Q SEC filings. Not 2Q2014 and 3Q2014 SEC reviewed 10Q's as I previously stated corrected below
Chris

From: Chris Dilorio <[REDACTED]>

Sent: Tuesday, June 23, 2020 9:48 AM

[REDACTED] >; [REDACTED] <[REDACTED]>;
[REDACTED] <[REDACTED]>; [REDACTED]

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

Ms Norberg,

I am in receipt of the SEC OWB correspondence allowing me more time to respond to the preliminary denial of my award application for the Oppenheimer 2015 covered action. This e mail was the last 1 I sent to your office related to my appeal. It will serve as the basis of my appeal. Including the attachments of my 2013 TCR submitted with Berger Montague to the SEC. I will also forward correspondence from 2012 and following detailing my extensive correspondence with Robin Traxler at FINRA as well as Sean McKessy in the OWB. Even though, I have previously forwarded your office as well as the SEC IG office the exact same corroborating evidence. My response to you will be lengthy and detailed. However, given that it took your office FIVE YEARS to send me a preliminary denial notice, that is understandable and in fact a result of YOUR lengthy delay in notifying me. ALL of my response pertains to the denial appeal at hand.

In 2011, I filed my first Whistleblower complaint with the SEC. Detailing a massive fraud on the public directly implicating dozens of entities. The center of my claims: Knight/KCG/VIRT: collectively NITE and the Swiss banking giant UBS:UBSS. By far, NITE was and still is today the largest MM/executing BD in the OTCM space. I was shocked to find the Swiss banking Giant UBSS was trading many of the same stocks as NITE and to the extent they were. This came on the heels of the FINRA UBSS Reg SHO complaint where the extent of the UBSS activity "threatened to undermine the integrity of our markets" while the SEC analysis of this activity was simply a case of "sloppy record keeping". My experience as an Institutional Sales trader: executing multi million share equity trades for the largest institutions in the world like Fidelity and Putnam. In addition, as a Research Sales person: analyzing financial statements and making investment recommendations formed the basis of my expertise. In fact, the SEC OWB has paid out awards for information just like mine. In August of 2011, I informed the SEC that NITE was insolvent having reported just \$105 mil in working capital at June 30, 2011. AND, for the reasons cited in my TCR detailing massive accounting fraud as a direct result of illegal naked shorting/self clearing/reverse splits/cusip changes etc. The SEC had a choice: investigate these extremely serious allegations and shut down this massive fraud on the public OR cover up their failure and allow this massive fraud on the public to continue. Unfortunately for the American public the SEC is mandated to protect, the SEC chose the latter. As a direct result, ALL of the activity detailed by me in this TCR and other TCR's filed with the SEC as well as 9 years of additional correspondence with the SEC, this is very much an ongoing, massive scheme. One that the SEC actively facilitates. Countless losses have been incurred as a result. NITE as I detailed is in a constant state of insolvency. The SEC has time and again intentionally misled the investing public that there is no abusive naked shorting. NITE is still in business TODAY.

The core business at NITE is and always has been: abusive naked shorting OTCM shells to facilitate money laundering. Not DMM, FCM, reverse mortgages, or even HFT. This illegal business is EXTREMELY profitable and

virtually riskless. AND, both the SEC and FINRA know this. In 2016, FINRA brought a Rule 204 complaint against NITE. The fine was pathetic and not meant to be a deterrent. This is WHY the OTCM exists. But it's not JUST OTCM as my AQR TCR filed with the SEC clearly proves: NASDAQ Blank check shells as well. I have also filed separate TCR's related to NewLead and FreeSeas: 2 massive money laundering shells which began on NASDAQ, de listed to the OTCM. NONE of the activity detailed in the Opco/Gibraltar complaint takes place without a willing executing BD/MM who ultimately turns worthless certs into real money. That #1 trader is NITE. As you read in my Knight TCR CGFIA is at the heart and, because it was based in Colorado, became a template of sorts for my extensive research. See Ms Norberg, unlike the SEC "investigators" on the Opco/Gibraltar complaint, I've actually seen first hand the CGFIA "world HQ" as well as the rented Littleton home of CGFIA CEO Guyer. I've done extensive research on Properties claimed to be owned and M&A transactions done for the sole purpose of cert printing and distribution (Aurelio AMNP) where the ultimate acquisition amounted to a distributor of Ukrainian folk music. I've also done extensive research on domestic and foreign financial institutions claiming to "invest" in these scam companies like Josh Sason/Hanover/Magna also cited in my 2013 Berger/Knight TCR linked. So, as I detailed to Ms Traxler, I followed Guyer to Neuchatel Switzerland and his previous endeavor: Antelope Technologies also with an office in Highlands Ranch CO. Where I discovered a connection to Swiss/German individuals/entities that were also related to another OTCM shell in the OpCo/Gibraltar complaint as well as my Knight TCR: AppTech. Offices in the Woodlands TX and Boca Raton. AND very much up and running today. SHOCKING. The SEC OpCo/Gibraltar complaint is based on the FINRA complaint. That is absolutely irrefutable. As the Gibraltar complaint alleges just 1 OTCM shell and just a million shares while Commissioners Stein and Aguilar referenced BILLIONS of shares in their OpCo waiver dissent. Who executed those BILLIONS of shares? Was OpCo even a MM? If I ask a question it's typically a rhetorical: I know the answer. The SEC knows the answer also. The SEC OpCo complaint does not mention the executing BD/MM. The SEC complaint doesn't mention Sason/Hanover/Magna either. The SEC complaint makes no mention of illegal naked shorting which is clearly evident in the CGFIA 10Q referenced below. THIS IS MY INFORMATION. So, why aren't NITE, Hanover/Magna and UBSS implicated in the SEC OpCo/Gibraltar complaint? What my TCR clearly and irrefutably proves: NITE was engaged in illegal activity both BEFORE and AFTER the SEC et al orchestrated August 1 2012 "trading glitch". So, the SEC bailed out a KNOWN criminal entity. Unfortunately for the investing public, the SEC has doubled downed on facilitating this illegal activity into 2020. The "glitch". Knight was insolvent in August 2011. I told the SEC this. The "glitch" proved my allegations. Key point in my TCR: NITE inadvertently sent 4000 worthless securities to JPM to secure an emergency bridge financing as collateral. These were open, naked short fails that could not be covered/closed due to a cusip change (SEC/FINRA approved rev split) booked as an "asset"(receivable) due to self clearing: MASSIVE accounting fraud. Ironically, the "glitch" proved my allegations: despite claiming to have a "highly liquid balance sheet" NITE had to raise the entire amount of the "glitch". AND the ultimate "financing" was not collateral based. Rather a 50% discounted convert when the stock had already been crushed to \$3 OR \$1.50. ALL of the financing participants knew the NITE balance sheet was complete fraud. NITE also committed securities fraud in pledging those 4000 worthless securities as collateral to JPM: SCOTUS Rubin: pledging collateral to secure financing is an offer to sell. JPM looked the other way. As did the SEC.

Further, I submitted my amended TCR with Berger in March 2013, In August of 2013, FINRA brought a penny stock AML complaint against OpCo. Sale of unregistered penny stocks. WHO ultimately executed the trades? 2008-2010. In July 2013, the "glitch" financing Gen Atlantic/Getco reverse merger with Knight to form KCG closed. The new CEO of KCG was Dan Coleman who ran Equities at UBSS during their Reg Sho and cross border activity. For UBSS, the DOJ (Acosta Downing et al) dropped their DPA in 2010. My claims: the FINRA OpCo/Gibraltar complaint clearly implicates UBSS criminal activity AFTER the DoJ dropped its UBSS x border DPA. This is what the SEC is protecting in the OpCo/Gibraltar complaint: NITE/UBSS/Hanover/Magna illegal activity.

Also in my Knight/Berger 2013 TCR: IMDS. A multi year money laundering shell kept up and running by the SEC. Also NITE,UBSS, and Hanover Magna. In addition to other entities like JMJ, Southridge, and Alpha Capital Anstalt. Alpha Capital Anstalt is very much in business today as a result of SEC obstruction while the SEC

recently brought a complaint against JMJ for activity like that in IMDS even AFTER he was barred by FINRA. In IMDS, the SEC allowed 2 barred individuals (CEO/CFO) to do an offering that created 37 BILLION shares of IMDS at .0001 with Chinese Nationals before revoking the IMDS registration. What do you do with 37 billion shares of IMDS at .0001 when there are no bids below that? NOTHING. The stock never traded. The SEC orchestrated a NITE/UBSS/Hanover/Magna/JMJ/Alpha etc MASSIVE naked shorting to facilitate money laundering scheme bailout so that the MASSIVE naked short position didn't need to be covered in the open market as is mandated by Rule 204. Thus insuring profits and not MASSIVE losses for NITE and UBSS.

I also filed separate TCR's for NewLead and FreeSeas. 2 "Greek shipping" money laundering shells started on NASDAQ and delisted to OTCM. NITE top trader in BOTH. Hanover/Magna in both. I contacted the KY Div of Mines and notified the SEC that these "transactions" were complete fraud. The SEC Feb 2019 complaint against Hanover/Magna is my information: Bogus obligations, assigned, converted to worthless certs. Then dumped on the public and converted to REAL money by the executing BD/MM:NITE. Who generates illegal trading profits by abusive naked shorting. Very symbiotic relationship. 1 of the Hanover/Magna entities was Gibraltar/Hanover. Somehow omitted from the SEC OpCo/Gibraltar complaint. In NewLead, then SEC White and Ceresney firm Debevoise did a "fairness opinion" of a Russian Nickel wire transaction where the NewLead CEO had back dated documents. That has been expunged from SEC reviewed filings. FreeSeas: a structured tax evasion/money laundering shell. Also involved Credit Suisse and Deutsche Bank. Both Debevoise clients. Both involved in the tens of billions Russian Mirror trade scheme. In addition to Hanover/Magna a Milken related entity Crede: Run by Milken/Drexel/Obstruction of justice/Parking: Terren Peizer and his felon partner Michael Wachs. This led me to Net Element NETE. Peizer again. This time with more AML red flags than be counted. Well known to the SEC through TWO of my separate TCR's. CEO is Oleg Firer. Firer former money laundering shell Acies shut down by the SEC while NETE was left up and running. Acies very much up and running also in MA. In NETE: NASDAQ. AQR Blank check shell. SEC allowed 2 offerings so that NETE could keep its NASDAQ listing. 1 was with entity Esousa: felon Wachs ex wife. 2nd was with Cobblestone: felon Wachs sister. I told the SEC. They still approved the offerings. I discovered AQR money laundering blank check shell activity doing research on NITE and Hanover/Magna. A top traded NITE OTCM shell was Cereplast. Another AQR blank check shell. Hanover/Magna/NITE/ and Alpha Capital Anstalt. Alpha is Liechtenstein based and controlled by Martin Schlaff: Austria/Israel. Also IMDS (w/Schlaff controlled Balmore) and the Frost/Honing/Stetson et al complaint. Schlaff also LH Financial/Wolfson/Sulphco and Bawag: Sedona/Scan Graphics: Refco: Naked shorting. NITE is Refco on steroids. Cereplast ended in bankruptcy.

NETE claims to be a "payment processor". BILLIONS in transactions processed. Never break even let alone profitable. Balance sheet complete fraud. AML red Flags: Firer is Grenada Amb to Russia living in Miami, Apockinas/Grinshpun/Antonov/Rakishev/Trump/Kushner/SBNY/CardWorks/Merrick Bank/ESQ/Cohen etc etc etc money laundering/transaction laundering BILLIONS shell. Kept up and running for years since filing my NETE/AQR SEC TCR's. ALL of my allegations proved accurate in 2020 when NETE received Cares Act taxpayer money then announcing it was "unlocking the value in its misunderstood payment processing business" by doing a reverse merger with a CA electric car company started by a former musician. The payment processing business to be "sold" and the new company (Mullen) will own 80-90%. All made possible by SEC obstruction and ACTIVELY facilitating illegal activity. Another AQR blank check shell is Astra/Phunware. More Greek shippers related to massive swindler Economou originally intended to do an "energy logistics company" acquisition and somehow settled on "mobile app developer" Austin TX: Phunware. PHUN CEO is well known to the SEC with shells going back 15 years. I alerted the DoJ and SEC that PHUN was a money laundering shell. In addition to the "genius quant" AQR, AIPAC: Gerber/Hudson Bay, Nordlicht: Ari Glass/Boothbay, 1MDB: Khazanah Nasional, Global Crown/Rani Jarkas/EFG/BSI/Optima/Max Fang. AG Barr 1MDB waivers: Kirkland also AQR. Broidy: Trump: 1MDB money laundering. PHUN also received Cares Act money. AND PHUN is Trump/Kushner/Parscale campaign mobile App. PHUN should have also been shut down long ago. AQR too. OTHER AQR blank check shells: CIS/Delta/Urban Tea, Ability/Cambridge, Hunter Maritime, and MI Acquisition/Priority Tech Holdings. Ability/Cambridge: Israeli cellular intercept/surveillance. Israel sent employees to jail. In the US it was "securities fraud". The SEC Ability/Cambridge complaint was handled by Ansu Banerjee in the SECLA office.

Milken/Mogilevich/BoNY money laundering entity Sinex: Debasish Banerjee. WHY did SECLA have jurisdiction over ABILF/Cambridge? Result: ABILF is very much up and running today. I believe this is the PHUN/Trump/Kushner/Parscale mobile app technology.

Hunter Maritime:HUNTF: Never consummated an acquisition. Just cert printing/dumping. Also involved: Milken family office: Silver Rock. MI/Priority:PRTH. CEO Tom Priore: well known fraudster to the SEC. Also transaction/money laundering like NETE. Also involved: Hanover/Magna.

ALL AQR money laundering shells up and running today thanks to the SEC. Only recently did the SEC revoke CGFIA and NewLead. well after going dark and the massive fraud on the public had already been perpetrated. In NewLead, FreeSeas, etc etc etc a common tool used is reverse splits to perpetuate and facilitate illegal activity. SEC/FINRA approved. The result is the massive accounting fraud at NITE. WHEN not IF there is an open naked short fail when a rev split takes place, a new CUSIP/security is issued. Trades in the old cusip/security cease. This creates a structural liability. The fail/short can NOT be closed. Like covering a short in AAPL with MSFT. Because NITE is self clearing it books a prop naked short as a receivable. An asset. But, because NITE won't or CAN'T deliver, massive accounting fraud. Literally a liability booked as an asset. This is how "glitches" are born. But the SEC facilitated fraud doesn't end there. The definition of a failed trade: 1 that hasn't settled. The SEC/DTCC issue new securities where trades in the old haven't settled yet AND not authorized by the issuer. Settlement: buyer brings cash/seller brings securities. The DTCC simply makes journal entries. But there are still "IOU's" in the system. The SEC authorized the DTCC to create a shadow clear,non guaranteed, ILLEGAL (clearly contrary to 34' Act "prompt and accurate settlement) Obligation Warehouse so criminals like NITE et al can circumvent close out REQUIREMENTS of Rule 204. The OW is just what it sounds like. Per my Knight TCR, DTCC suspends services (Chill/Lock) and trades are deemed "ex clearing". In a FOIA request made with POGO,Berger and I asked the SEC fails data on dozens of NITE/UBSS top traded stocks like CGFIA,APCX and IMDS. The SEC response: see our website. The SEC fails data is for DTCC cleared trades only. The SEC knows exactly the level of fails sitting in the OW. They don't disclose. Intentionally misleading the public there is no naked shorting. In 1Q2020, the receivable at NITE/VIRT increased \$1.2 BILLION sequentially. Up almost 90%. AND the tangible book value is grossly insolvent. When it comes down to it, there really isn't ANYTHING in the receivable that NITE can convert into cash for its own use. There are prior commitments on those "assets": SETTLEMENT of transactions. Because the SEC has never shut down this activity, NITE is in a constant state of insolvency.

Other examples of SEC attempts to cover up NITE illegal activity so that it can continue include:

Cerberus/Feinberg/VIRT bidding on NITE post "glitch". Wasn't their turn. First, Gen Atlantic needed to monetize its GETCO "investment". The HFT business at GETCO was in a death spiral when the rev merger took place. So what was the attraction to NITE? The business that had absolutely ZERO overlap/synergies: OTCM. As low tech as it gets. Literally a trader sitting in a chair. As I have asked the SEC on hundreds of occasions over the years: what would happen to NITE trading profits if their OTCM share volumes went to ZERO? Cerberus is Feinberg: Gruntal/Milken. Also bailed out Bawag:Refco, HSH, and Deutsche Bank (\$50 bil Bad Bank to Goldman). Another Milken/NITE connection is Rich Handler: Jefferies. Also a Milken/Drexel protege. Milken was Gruntal: Feinberg,SAC,Icahn, Sater etc. Gruntal was "sold" to Ladenburg. Controlled by Vector/NewValley:Icahn/Lorber/Elliman etc. And, was sold to multi billionaire Frost. Who, according to the SEC risked it all trying to "make" a few million when he, Honig, Stetson, Alpha et al were really LAUNDERING. Milken also Whiterock ,D H Blair (Morty Davis) and AR Baron (Bressman/D H Blair) which was the precursor to Bear Stearns collapse . So, Milken and his merry crew of flunkies are really at the nexus of JUNK. They own Trump and his White House (Trump casino junk) and they own the SEC. It was Milken, Leon Black, Handler, Moelis, Virtue: Drexel that caused the S&L taxpayer bailout stuffing them with junk like Trump's. It is no coincidence that these same flunkies are also the largest CLO originators/managers. CLO's: Junk on steroids. AGAIN Bailed out by taxpayers in Cares Act HY. There also connections to Epstein. Treasury Sec Mnuchin and Black: HY/Junk/S&L's and Epstein. Black: Money laundering shell ESWW kept up and running by the SEC was/is an Epstein money laundering vehicle: JUNK IS JUNK.

THIS EXPLAINS the Handler/Jefferies/Milken repeated bailouts of NITE. It also explains the SEC criminal obstruction.

SEC Chair Clayton is also directly linked to this criminal obstruction. His firm Sullivan Cromwell and Jared Fishman are ACTIVELY facilitating this massive fraud on the public. Clayton did not disclose these conflicts in his disclosures. Sull Crom/Fishman have advised Knight/KCG/VIRT and several transactions designed to facilitate this ongoing and ongoing fraud on the public. Many of the same players involved in the "glitch" were involved in the VIRT acquisition of KCG in July 2017. In addition to Sull Crom/Fishman and Handler/Jefferies: JPM and Goldman. The SEC facilitated fraud in the NITE/VIRT transaction is egregious illegal activity. The transaction NEVER should have happened. KCG was an SEC reporting company until the deal closed on July 31 2017. Despite this FACT, VIRT CEO Cifu refused to "publish" KCG 2Q2017 financials. I estimate Cifu/Coleman/Handler/GS/JPM wrote down more than \$4 billion in open naked short fails: "leverage". The SEC let him. Meaning: "assets" used to determine the take out/ tangible book of KCG was complete fraud. VIRT grossly OVER paid for insolvent KCG.

Prior to the NITE/VIRT transaction closing in July 2017, NITE would report its trading stats monthly. Including OTCM share volumes. Cifu stopped this post merger. The SEC let him. In fact, you will find NO reference to NITE/VIRT OTCM share volumes in any SEC reviewed filing, sell side research or investor presentation. A well orchestrated fraud on the public. Omissions to Intentionally mislead the public as to the true representation of the NITE/VIRT business model. These share volumes are also at the center of my 2013 Berger TCR. There are no affirmative disclosures in any SEC filings to this day as to the AML risks posed in trading these OTCM and other shells. In a 2014 letter to the SEC, I detailed the first 2 months of NITE OTCM share volumes. When the 1Q2014 10Q was filed, these volumes were confirmed: An ASTRONOMICAL increase sequentially as well as year over year. These share volumes/my letter/TCR SHOULD have triggered an immediate SEC investigation. It did not. This portion of the KCG 1Q2014 10Q was expunged as well as 2Q2014 OTCM share volumes. I have detailed this to the SEC/OWB/Enforcement/IG. In the months leading up to the NITE/VIRT closing in July 2017, KCG put out monthly trade stat pr's showing KCG trading more volume than the overall market. Also indicative of naked shorting. Those pr's were also expunged. I also including electronic forms to the SEC OWB/Enforcement/IG. The SEC has essentially outsourced the ENTIRE OTCM market to the Broker Dealer SRO FINRA. Including: management of the OTCM share volume website fka OtcBB.com. Today, there is very little transparency into trading activity by MM as a result. Also: ISSUER corporate actions: rev splits, Short interest reporting: an absolute farce given there is still no CAT. AND BD compliance with the BSA. Per my TCR: WHY did NITE and UBSS trade Billions of shares of CGFIA and IMDS AFTER a Chill or Lock was placed (ex clear/OW)? CLEAR AML red flags. Because they had an open naked short position. Why not pull a market? Because they had an open naked short position. SAR's? WHEN? BEFORE OR AFTER THEY TRADED BILLIONS OF SHARES? There were no SAR's either. NITE can not outsource its compliance responsibilities to 3rd parties (like OpCo) when executing trades as MM. In 2015 at a SIFMA conference, Ceresney was "shocked" by the number of BD's under his supervision filing 1 or ZERO SAR's. NITE SHOULD have been investigated for egregious BSA violations long ago based on my TCR. Knight/KCG/VIRT:NITE is and always has been a criminal enterprise. Spitzer Russian/US mob bust: "worthless paper". Ashton Tech became VIE became Optimark became Knight/Trimark NITE literally "made by the mob". The SEC has known this for years. ALL of the "worthless paper" shells were SEC reporting companies. Today, Trump PA Campaign Mgr David Urban sits on the NITE BoD. AND is also on the BoD of his very own money laundering shell: Canadian/Pakastani/pot/COVID: FSD Parma: HUGE. Trump advisers/campaign staff Bannon and Parscale also involved in OTCM money laundering shells.Parscale Cloudcommerce fka Roaming Messenger also receiving taxpayer Cares Act money.

Madoff: more money laundering than Ponzi. HOW THE HELL did the SEC let that scam go on for as long as it did? Criminal obstruction. The former SEC IG Kotz actually investigated his "bosses" at the SEC unlike current IG Hoecker. Years of SEC obstruction. Bullshit "investigations" into "running ahead" meant to distract. Similar to the SEC "glitch" "market access complaint" where former SEC "glitch" Enforcement Dir Khuzami/Kirkland(Barr) also rep'd NITE. Can't make this up. The center of IG Kotz scathing failure of the SEC in Madoff: SEC NY and Mr John McCarthy who ended up being Knight/KCG Chief Counsel. As I said: can't make this up. And, as we know Madoff started his career in NASDAQ penny stocks exactly like the 1's in the Spitzer/Mob complaint.

OTCM: This is WHY the OTCM exists: abusive naked shorting publicly traded shells to facilitate money laundering. CEO Cromwell Coulson CHAIRED the FINRA market Regulation Cmte. Say it with me: Can't make this shit up: CMTSU. A founding OTCM Board member is former NITE trader Andrew Wimpfheimer:CMTSU. This is a very well orchestrated and ongoing fraud on the public. Russian mirror trades: no SEC OR DOJ investigation HOW? According to stories: activity peaked in 1H2014. Coinciding with NITE astronomical OTCM 1Q2014 share volume increase. In addition to money laundering penny stock shells, the OTCM is also home to many ADR's. Including Russian ADR's cited in the NYDFS/DBTCA/mirror trade complaint. Little/no disclosures. Also in my TCR: P&D is just a tool used to facilitate the fraud and NOT a stand alone fraud. The SEC intentionally stops short of thorough investigations into much bigger frauds. The same way it has the public believe the "penny stock trading fairies" convert worthless certs to real money. NO! willing executing BD's and MM's like NITE do that. Less than a year after filing my Knight TCR with Berger, FINRA (not the SEC) brought the BBH AML complaint. This was my information. Swiss banks, foreign/domestic institutions, executing BD's/MM's/ penny stock shells: \$850 mil in proceeds. Did BBH implicate NITE and other entities in my claims? WHY are all of the entities in the complaint UN NAMED? In the interest of transparency for the investing public? In 2019, I also filed an award application for the UBS x border/AML complaint. This is BLATANTLY my information. SEC/FINRA/ AND the SEC. I filed an IRS TCR based on my SEC TCR attached. In April 2016, 2 IRS CI Agents: VIKAS Arora and Nathan Sarnacki flew to Denver from Chicago to meet with me. I believe they were blown away. Then came the UBS complaint. As a follow up to our meeting, they wanted to know WHO at the SEC I shared my information with. I told them. That was the last I heard from them although I continued to send them my information.

To the SEC IG Carl Hoecker: In 2015 I parted ways with Berger as I was convinced the SEC was using my information in an unethical/illegal manner to both bring and obstruct complaints. Berger was not willing to file an IG complaint. After parting ways, I almost immediately did just that. Prior to retaining Berger I had filed an award application for the UBS Reg Sho complaint. In my submission and my correspondence with Mckessy/OWB I made the claim based on OWB permissible rules to "open a new line of inquiry". One that would link the trading activity detailed in my ultimate TCR by NITE and UBSS. That link: Abusive naked shorting publicly traded shells and money laundering. My application was denied and there was no investigation into this link. The SEC had just bailed out a "known criminal enterprise":NITE "glitch" was not a forthcoming admission. Neither was the blatantly and knowingly false pretext for the DOJ dropping its UBSS x border DPA because "UBSS was in full compliance" in 2010. So, rather than open a new line of inquiry, the SEC chose to obstruct.

I made clear to Hoecker the egregious conflicts by Khuzami,White and Ceresney with clients UBS,JPM,CS, and DB. Hoecker claims to have conducted a "thorough" investigation of my very serious allegations and found nothing. Despite MJW waivers received to "investigate" her Swiss bank client CS. Then in 2019, Hoecker arrogantly told me I could file a FOIA request on his findings. Then, came 2019 and absolutely nothing had changed. NITE was still trading billions of shares of OTCM shells like ELTZ. There were still no risk disclosures. Cifu refused to publish KCG 2Q2017 financials, Hanover/Magna/AQR/Alpha/IMDS etc etc etc were still up and running . I filed ANOTHER complaint with IG Hoecker. Despite the fact that Hoecker himself wrote the IG handbook on "thorough investigations" mandating complainant interviews, I have never been interviewed by Hoecker. In addition, the IG Hoecker is mandated to inform Congress as to serious allegations like mine. He did not. In doing so, obstructed Congress from executing its oversight of the SEC/OWB. And despite hundreds of offers to fly to SEC HQ to have the best and brightest at the SEC rip apart my allegations 1 by 1 I have never been taken up on my offer. Why is that? The SEC OWB has gone to great lengths in other cases to explain the OWB process etc to whistleblowers. I have never been told "no thanks" for my information. In fact, McKessy has solicited MORE information from me after submitting my Berger TCR. In Madoff, an intern could have verified/shut down in weeks NOT years. No contra parties. Only a well orchestrated obstruction by SECNY/McCarthy et al kept it up and running. As I have also repeatedly told the SEC: My claims could be verified in weeks also. NITE has a P&L for every stock they trade. These, aggregated, are basis for quarterly trading profits. These P&L's, combined with OW data, and balance sheet data will validate ALL of my claims. I've offered my service to do exactly that. 2 weeks max. Afterall, proprietary trading strategies are NOT proprietary if they're

illegal. For the reasons I have listed in this summary, NITE/VIRT is on the SEC "do not investigate list". And yes, there most definitely is such a thing. Especially when it comes to illegal activity facilitated by the SEC. So, the SEC denial of my OpCo award claim which was 5 years in the making is just another example of my very serious allegations: The SEC solicits and uses whistleblower information like mine to both bring and obstruct complaints. Unethical. Illegal. To deny my award application because the "investigators" didn't see my information is further affirmation of my allegations. They saw it. They used it. They denied my compensation for it. Again Ms Norberg, I will forward my 2012 etc emails with Robin Traxler at FINRA as well as McKessy as further evidence that my Award application denial should be overturned. Further affirmation from 2 dissenting SEC Commissioners and the judge in the Gibraltar case makes this denial both egregious and bizarre. Bizarre ONLY if you believe that there is no SEC obstruction that is. BTW, crazy stuff going on with the firing of Mr Berman/Clayton nomination to take his place/Rabbitt to DoJ/Carpenito replacing [REDACTED]/Trump/Barr don't you think? The SEC needs some fixers. Wonder why. I'm cc'ing some of our mutual friends on this email Jane. The last overt act of this massive ongoing, SEC facilitated conspiracy has not occurred yet.

Cheers!
Christopher J Dilorio
Whistleblower
[REDACTED]

From: Chris Dilorio <[REDACTED]>
Sent: Wednesday, June 10, 2020 2:30 PM
To: [REDACTED]
Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

Mr Roach,
The SEC is irrefutably using my information in unethical and illegal manner. My information is being used to BOTH Bring complaints AND obstruct/protect investigations into entities detailed in my various TCR's. Denying me rightful compensation. This is the latest example.....
Chris

From: Chris Dilorio <[REDACTED]>
Sent: Monday, May 18, 2020 10:36 AM
[REDACTED]
Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

As straightforward as it gets:
The SEC OWB dragged its feet for 5 years in issuing its preliminary denial notice.
The SEC knows this is my information. The SEC committed fraud on the court in Gibraltar. The judge corrected them. The SEC was omitting information that implicated NITE, UBSS and customers like Sason/Hanover/Magna. The SEC was obstructing a thorough investigation of my claims. The naked shorting cited in the CGFIA 10Q in 2013 PROVES my allegations. The SEC's "targeted investigation" stops short of a full accounting. The SEC

Gibraltar complaint does NOT explain the totality of the Oppenheimer complaint. The SEC Gibraltar complaint cites 1 OTCM shell and less than 1 million shares traded by Opco. 2 dissenting Opco waiver SEC Commissioners proved that also citing "BILLIONS" of shares in their dissent. The SEC/Opco AML complaint was based on the FINRA complaint and my information. The SEC OWB concocted a completely fabricated reason for denying my Award: "The SEC investigators involved never saw claimants information". The responsibility to distribute Whistleblower information within the SEC is the exclusive and explicit responsibility of the OWB. As a result, the massive fraud taking place continued well into 2020. The 1Q2020 10Q proves this.

The SEC IG Hoecker is guilty of violating specific IG requirements in keeping Congress informed of serious matters like mine. The SEC IG Hoecker has never interviewed me despite my filing 2 separate complaints with his office. The SEC IG Hoecker is guilty of criminal obstruction. SEC Chair Clayton and Co Enforcement Peikin worked at Sullivan Cromwell with Jared Fishman. Fishman has played a key role in the SEC facilitated criminal obstruction. Peikin and Clayton should have recused themselves from ANY pending NITE/VIRT matter before the SEC: My information. Clayton and Peikin should have recused themselves from the SEC facilitated KCG/VIRT merger. My information, including the Opco AML complaint SHOULD have stopped the merger from ever happening. 2 former SEC Commissioners agree with that analysis. The SEC is actively facilitating a massive ,ongoing fraud on the American people they are mandated to protect. NITE/VIRT is a criminal entity. The SEC MUST invoke emergency powers and halt trading in VIRT IMMEDIATELY.

In short Mr Arp, the criminal activity actively perpetrated by the SEC OWB/IG must be referred to law enforcement as well as Congress. Separate but related: SEC facilitated criminal activity and my claims. The criminality is a matter for law enforcement. My pending matters with the SEC have no bearing on a criminal investigation OR a GAO investigation.

You are incorrect in your analysis.

I Urge the IG Integrity Board to have SEC IG Hoecker refute my claims point by point.

I will be on a plane tomorrow so he can do it in person.

Cheers!

Christopher J Dilorio

Whistleblower

From: Chris Dilorio <[REDACTED]>

Sent: Tuesday, May 12, 2020 8:54 AM

To: [REDACTED] <[REDACTED]>

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

Almost immediately I filed a formal appeal to the SEC OWB fabricated denial of my award application. In this appeal I show irrefutable proof of my allegations: The SEC OWB used/ is using my information to both bring complaints AND obstruct complaints while denying me compensation. In short: My information exposes an ongoing, massive in scope, SEC facilitated fraud on the American people. Rather than shut it down, the SEC has chosen to cover up so that the illegal activity can continue. It does in 2020

Chris

From: Chris Dilorio <[REDACTED]>

Sent: Monday, May 11, 2020 7:16 PM

To: [REDACTED]

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

From: Chris Dilorio <[REDACTED]>

Sent: Wednesday, April 29, 2020 8:03 AM

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

The SMOKING GUN in my allegations:

Naked shorting in CGFIA (My TCR/FINRA complaint) by "un named third party BD" in 2013. Well known to the SEC. This is why there was no investigation into the ENTIRETY of the FINRA trading activity. The SEC issued waivers to Opco within days of its AML complaint. WHO was the SEC protecting? WHO were the customers and executing BD's/MM's in the Opco complaint? ALSO well known to the SEC:

MY INFORMATION. 5 years to get a preliminary denial: statute of limitations. BUT the last overt act of this ongoing conspiracy has not yet occurred.

Chris

From: Chris Dilorio <[REDACTED]>

Sent: Wednesday, April 29, 2020 7:56 AM

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

Still more evidence of a well orchestrated scheme to cover up and obstruct a FULL SEC investigation into Opco/Gibraltar/NITE/UBSS trading activity in billions of shares of OTCM money laundering shells. The SEC used my information to bring AND obstruct complaints.

The 2 SEC Commissioners dissent in granting Oppenheimer waivers after this egregious activity

<https://www.sec.gov/news/statement/dissenting-statement-oppenheimer-inc.html>

SEC.gov | Dissenting Statement In the Matter of Oppenheimer & Co., Inc.

Dissenting Statement In the Matter of Oppenheimer & Co., Inc., by Commissioner Luis A. Aguilar and Commissioner Kara M. Stein, February 4, 2015

www.sec.gov

In fact, the SEC waivers came within days of their complaint. Here, these 2 Commissioners cite Oppenheimer trading "BILLIONS of shares of penny stocks". Clearly, they were not JUST referencing the SEC Gibraltar complaint. WHO was the SEC protecting with its complaint then waivers?

EFTA00039777

The smoking gun which I have provided to the SEC on several e mails:

Which came in an SEC reviewed CGFIA 10Q

https://www.sec.gov/Archives/edgar/data/1344394/000135448814000425/cgfi_10q.htm

cgfi_10q.htm - SEC

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

www.sec.gov

pg 27

"Our stock is subject to a "Global Lock" imposed by the Depository Trust and Clearing Corporation (DTCC)"

"On September 24, 2013, we were notified that the DTCC would be placing a 'Global Lock' on the Company's Class A stock as a result of actions by a third-party broker dealer. On November 11 2013, DTCC imposed the "Global Lock". Since less than 0.02% of the Company's Class A common stock shares were held within DTCC, Management chose to not undertake the expense of challenging the Global Lock. Nevertheless, shares that are held in street name (CEDE & CO), will not be able to be withdrawn from DTCC without further action."

Of Course, I have hard copies if you prefer.

ex clearing: The illegal SEC/DTCC Obligation Warehouse.

This is CLEAR, IREFUTABLE, INCONTROVETIBLE evidence of naked shorting by executing BD's in CGFIA. This activity took place per my Knight/UBSS TCR submitted to the SEC. So, WHY did the SEC obstruct an investigation into the ENTIRETY of the trading activity in the FINRA (and FINCEN) complaints? WHO were the executing BD's/MM's? WHO were the customers?

The veracity of my information is also irrefutable and incontrovertible.

Game. Set. Match. The SEC is a grossly corrupt, criminal enterprise facilitating illegal activity detailed by me so that this activity can continue. It does in 2020. The SEC solicits then uses Whistleblower information (MINE) to bring complaints AND obstruct other illegal activity while denying proper compensation to whistleblowers (ME). The SEC KNEW who the "third party BD" was in the CGFIA filing long before it filed its Opco complaint in 2015. It had my TCR in its possession in March 2013. So why did it take 5 years for the SEC to issue its preliminary denial? I would remind the SEC that this is very much an ONGOING conspiracy on the part of the SEC et al. IN FURTHERANCE OF THE CONSPIRACY.....

Cheers!

Christopher J Dilorio

Whistleblower

From: Chris Dilorio <[REDACTED]>

Sent: Tuesday, April 28, 2020 7:24 AM

EFTA00039778

[REDACTED]

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

Per my extensive SEC TCR's: Josh Sason/Emanuel/Abitebol/Hanover/Magna extensive overlap with NITE/VIRT (and AQR) money laundering shells.

The SEC Sason/Magna/NewLead Feb 2019 complaint: also my information

<https://www.sec.gov/litigation/complaints/2019/comp24403.pdf>

Marc P. Berger SECURITIES AND EXCHANGE COMMISSION Brookfield Place
200 Vesey Street, Suite 400 New York, NY 10281-1022 SOUTHERN
DISTRICT OF NEW YORK JOSHUA SASON, MARC MANUEL,

3 5. In addition, Pallas acted as an underwriter for a primary offering of NewLead stock, which NewLead attempted to disguise as an asset sale transaction.

www.sec.gov

https://www.sec.gov/Archives/edgar/data/1322587/000114420413065095/v361773_sc13g.htm

www.sec.gov

(i) Sole power to vote or to direct the vote . The information required by Item 4(c)(i) is set forth in Row 5 of the cover page for each Reporting Person hereto and is incorporated by reference for each such Reporting Person.

www.sec.gov

MG Partners Ltd: Abitebol

But not in the complaint: MAGNA GIBRALTAR INVESTMENTS LLC: also Abitebol

As with Opco/GIBRALTAR, who is the SEC protecting?

AND, per my extensive correspondence with the SEC re my TCR's: The SEC is ALSO grossly under estimating the criminal activity in NITE/Magna/NewLead

SEC: Criminals bailing out/actively facilitating criminals/criminal activity.

soliciting/using whistleblower information in unethical/illegal manner to bring complaints/obstruct complaints/deny whistleblower rightful compensation.

Cheers!

Christopher J Dilorio

Whistleblower
[REDACTED]

From: Chris Dilorio <[REDACTED]>

Sent: Tuesday, April 28, 2020 6:43 AM

[REDACTED] >;
[REDACTED]

EFTA00039779

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

More evidence of SEC fraud on the court in Gibraltar.

It is CLEAR that the Opco AML Covered Action 2015-016 was NOT ENTIRELY based on the SEC Gibraltar Action. The SEC Gibraltar action covered trading activity in just 1 OTCM Money laundering shell: Magnum d'Or where Opco traded less than 1 million shares. CLEARLY the SEC Opco complaint was based on the trading activity in the FINRA Opco AML complaint: my information. However, the SEC Opco complaint even stops short of a thorough investigation of the ENTIRETY of the FINRA trading activity. WHY? WHY didn't the SEC Opco/Gibraltar complaint go into trading activity in the FINRA AML OTCM shells through 2014 as FINCEN did? WHY did the SEC omit MATERIAL information to the court in Gibraltar causing a "significant under estimating" of criminal activity? The SEC knows who the accounts were. The SEC knows who the executing BD's/MM's were. The SEC committed a fraud on the court in Gibraltar.

Gibraltar was ROLLING OUT NEW OTCM services into the end of 2011.

<https://www.pr.com/press-release/355246>

Gibraltar Global Securities Now Offering Offshore Brokerage Accounts - PR.com

Nassau, Bahamas, The, September 22, 2011 --()-- Gibraltar Global Securities is now offering offshore brokerage accounts in addition to their broad array of financial services.Gibraltar Global ...

www.pr.com

<https://www.pr.com/press-release/355247>

GGSI Bahamas is Now Offering Pink Sheet Clearance

Offshore Broker Adds to Buying and Selling Services

www.pr.com

<https://www.pr.com/press-release/369649>

GGSI Bahamas Provides State-of-the-Art Security for OTC PINK Transactions and Communication

GGSI (Gibraltar Global Securities Inc.) has just announced the release of their latest security measures designed to protect their client's personal data, and to secure electronic communication.

www.pr.com

The SEC KNEW the Gibraltar/Opco trading activity went well beyond 2011 YET cut off its investigation at "well into 2010". Thus, KNOWINGLY omitting material information in Gibraltar: FRAUD ON THE COURT.

Confirming my allegations of SEC criminal activity in handling my information. WHY? to protect NITE and UBSS.
2 criminal entities bailed out by the SEC.

Now, the SEC is using the completely fabricated reason for denying my award claim for covered action 2015-016: "The investigators never saw the claimants information".

WHEN the explicit and exclusive responsibility to distribute whistleblower information within the SEC falls on the OWB itself.

More criminal activity.

Criminals bailing out criminals while denying Whistleblowers due process and compensation.

Cheers!

Christopher J Dilorio

[REDACTED]
Whistleblower

From: Chris Dilorio <[REDACTED]>

Sent: Sunday, April 26, 2020 9:36 AM

To: [REDACTED]

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

From: Chris Dilorio <[REDACTED]>

Sent: Friday, April 24, 2020 8:18 AM

[REDACTED]; [REDACTED] <[REDACTED]>;
[REDACTED]; [REDACTED]

Subject: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

I am in receipt of the SEC preliminary denial of my award claim for the Oppenheimer AML covered action 2015-016

This is my formal appeal of the SEC preliminary determination.

My award application was based on this very simple FACT:

The SEC (and FINCEN) Oppenheimer AML actions were based on the FINRA Oppenheimer AML action

FINRA

https://www.finra.org/sites/default/files/fda_documents/2009018668801_FDA_KMX39652.pdf

of - FINRA

which is FINRA a party, to the entry of findings and violations consistent with the allegations of the (as Complaint sanctions amended and by the Offer of Settlement), to the imposition of the set forth and below, understands fully that this Order will become part of Respondent's permanent disciplinary and record may any be considered in future actions brought by FINRA. BACKGROUND ...

www.finra.org

The SEC

<https://www.sec.gov/litigation/admin/2015/33-9711.pdf>

Before the SECURITIES AND EXCHANGE COMMISSION

Before the . SECURITIES AND EXCHANGE COMMISSION . SECURITIES ACT OF 1933 . Release No. 9711 / January 27, 2015 . SECURITIES EXCHANGE ACT OF 1934 . Release No. 74141 / January 27, 2015 . ACCOUNTING AND AUDITING ENFORCEMENT . Release No. 3621 / January 27, 2015 . ADMINISTRATIVE PROCEEDING . File No. 3 -16361 . In the Matter of

www.sec.gov

FINCEN

<https://www.fincen.gov/news/news-releases/fincen-fines-oppenheimer-co-inc-20-million-continued-anti-money-laundering>

FinCEN Fines Oppenheimer & Co. Inc. \$20 Million for Continued Anti-Money Laundering Shortfalls | FinCEN.gov

Washington, D.C. – The Financial Crimes Enforcement Network (FinCEN), working closely with the U.S. Securities and Exchange Commission (SEC), assessed a \$20 million civil money penalty today against Oppenheimer & Co., Inc., for willfully violating the Bank Secrecy Act (BSA). Oppenheimer, a securities broker-dealer in New York, admitted that it failed to establish and implement an adequate ...

www.fincen.gov

In the summer of 2012, I had extensive correspondence with Robin Traxler at FINRA where I also cc'd Sean McKessy then SEC OWB Chief. The CURRENT OWB Chief and the SEC IG are in possession of this correspondence. My correspondence dealt with 2 penny stock shells cited in my Knight Capital TCR submitted by Berger Montague in March 2013 attached here: Colorado Goldfields and AppTech. Both shells were NITE and UBSS top traded OTCM shells in 2010-2013. These 2 shells were cited by FINRA in their Oppenheimer AML complaint. Again, the SEC and FINCEN Oppenheimer AML complaints were based on this FINRA complaint. In fact, per the FINRA Opco complaint above, customer "TC" was dumping worthless AppTech (APCX) certificates well into mid 2010. DIRECTLY overlapping with the NITE/UBSS APCX trading activity cited in my Berger 2013 TCR attached and discussed by me with Robin Traxler at FINRA. HOW is it possible that the SEC OWB didn't share my information with SEC investigators? Current SEC OWB Chief Norberg was previously an assistant to then OWB Chief McKessy.

WHO ultimately executed the trades cited in the FINRA Opco complaint?

Further, the SEC Gibraltar Securities complaint raises more questions than answers as well.

<https://www.sec.gov/litigation/complaints/2013/comp22683.pdf>

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK
SECURITIES AND EXCHANGE COMMISSION, 13 Civ. GffirALTAR GLOBAL
SECURITIES, COMPLAINT NATURE OF THE ACTION - SEC.gov

12. David Della Sciucca, Jr., age 27, is a resident of Fort Lauderdale, Florida. In the Magnum d'Or complaint, the Commission charged Della Sciucca with acting as a nominee

www.sec.gov

The SEC Gibraltar Securities complaint references only 1 OTCM money laundering shell: Magnum d'Or. The complaint specifically states that Oppenheimer sold just 969,822 shares. Again, no mention of executing BD/MM.

The SEC Oppenheimer AML cites Gibraltar trading activity also.

The share amounts in the SEC complaint grossly under estimate that in the FINRA complaint. WHY?

The judge in the Gibraltar case said "the SEC's requested amount CLEARLY UNDERESTIMATES the defendants ill-gotten gains...."

<http://www.tribune242.com/news/2016/jan/13/bahamian-broker-25m-sanction/>

Bahamian broker in \$25m sanction | The Tribune

A former Bahamian broker/dealer and its principal have been hit with a combined \$24.484 million in financial sanctions by a US court, which found that their "ill gotten gains" were likely ...

www.tribune242.com

WHY didn't the SEC go after ALL of the sellers in the FINRA Opco AML complaint? WHY did the SEC "strip out" \$46 million from the Gibraltar ill gotten gains claiming the customers were "UNKNOWN"? WHO is the SEC protecting? WHO were the executing BD's/MM's in the FINRA Opco CGFIA and APCX trades? They certainly know who the customers were. Is customer "JK" Justin Keener/JMJ also in my March 2013 TCR attached? While the SEC Opco AML was based on the FINRA Opco AML, it stopped short of a thorough investigation of NITE and UBSS. In fact, the trading activity of NITE/VIRT and UBSS in the FINRA complaint: my information SHOULD have triggered an immediate investigation of NITE and UBSS. It did not. Did the SEC commit fraud on the court in its OMISSION of material information?

The timing of the SEC's preliminary determination and the reasoning for the denial ALSO raises more questions than answers.

My Award application for the Oppenheimer AML SEC complaint was 5 years ago. That's FIVE years ago. So, WHY NOW am I so blessed by the SEC with a preliminary judgement?

The SEC basis for denying my Award claim for covered action 2015-016:

"Investigative staff responsible for the covered action NEVER RECEIVED ANY INFORMATION FROM THE CLAIMANT OR had any communication with the claimant"

Let's take this whopper in 2 parts:

First, the SEC OWB denied my Award application because The investigators in the complaint never received my information. Has the SEC OWB re written the investigative protocol in this denial? How am I or ANY whistleblower supposed to know WHO the investigators are in a particular case WHEN according to the SEC: ALL investigations are done in a confidential manner????

WHAT DOES THE SEC DO WITH WHISTLEBLOWER TIPS EXACTLY? Do they share whistleblower information with ENFORCEMENT as is mandated? HOW would ANY whistleblower know WHO to share information with at the

SEC? Isn't that the job of the SEC OWB?

Second, the fact that no one at the SEC contacted me DOES NOT mean the SEC didn't use my information. This is a completely bogus argument. It certainly would NOT be the first time the SEC used my information now would it Jane?

In fact, it is NOT the responsibility of the whistleblower to get his/her information to the right Enforcement personnel. That responsibility EXPLICITLY falls on the SEC OWB. So, is the SEC OWB admitting gross negligence in handling my information? After the monumental failure in the Madoff Ponzi/ money laundering SEC facilitated scam on the public the then SEC IG made specific recommendations to the SEC with regards to the proper handling/vetting of Tips and Complaints.

<https://www.sec.gov/files/468.pdf>

Review and Analysis of OCIE Examinations of Bernard L. Madoff Investment Securities, LLC

Review and Analysis of OCIE Examinations of Bernard L. Madoff Investment Securities, LLC Executive Summary Background. On June 25, 2009, the Securities and Exchange Commission's

www.sec.gov

AGAIN: The responsibility to properly vet Whistleblower information and get the information into the right hands at the SEC falls EXPLICITLY and EXCLUSIVELY with the SEC OWB itself and is NOT the responsibility of the whistleblower. Further, according to the previous SEC IG in the monumental Madoff failure: the responsibility to contact those supplying Tips and Complaints ALSO falls explicitly and exclusively with the SEC OWB and not the whistleblower. Using these excuses as the basis of denial of Award is completely contrary to SEC MANDATED protocols and procedures.

Is the SEC OWB admitting it doesn't comply with those recommendations? Recall: the monumental SEC Madoff failure was NOT the fault of Whistleblowers either. OR is the SEC OWB scrambling for a 5 years in the waiting preliminary determination?

So, after 5 years of waiting for a preliminary determination for my award claim, this is what the SEC best and brightest come up with?

My Denial of Award for covered action 2015-016 was completely made up on the fly.

The SEC OWB has applied completely fabricated "rules" to issue this denial. Further affirmation of ALL of my allegations.

Also by SEC admission, the SEC allowed these 2 penny stock shells to remain a clear and present risk to the investing public. Were CGFIA and APCX ONLY money laundering shells for Oppenheimer in 2008-2010 and then suddenly they were no longer money laundering shells when NITE and UBSS traded billions of shares of both shells 2010-2013?

WHY did it take until September 2018 before the SEC finally revoked the CGFIA registration?

<https://www.sec.gov/cgi-bin/browse-edgar?company=Garpa&owner=exclude&action=getcompany>

So, WHY was there no SEC investigation of NITE and UBSS trading activity in money laundering shells APCX and CGFIA? The SEC et al facilitated NITE "glitch" took place in August 2012. This SEC/Jefferies/JPM/BX/GS/SEC Chair Clayton Sullivan Cromwell colleague Jared Fishman et al bailout coincides directly with NITE trading activity in 2 SEC/FINRA/FINCEN acknowledged money laundering shells. AND the "bailout" penny stock esque reverse merger between Getco and Knight didn't close until July 2013. HOW could the SEC conduct a COMPLETE and thorough investigation into the FINRA Opco AML complaint WITHOUT implicating NITE when NITE was CLEARLY trading billions of shares of OTCM money laundering shells BEFORE and coinciding with the SEC et al facilitated

"glitch" bailout? For UBSS, the DOJ dropped its cross border AML DPA complaint in 2010. UBSS was trading money laundering shells well after the DOJ claimed UBSS was in compliance with the cross border DPA. To be clear: BOTH NITE and UBSS knew CGFIA and APCX were money laundering shells when they traded billions of shares of each 2010-2013. Is that FACT disputed by the SEC? The SEC OBSTRUCTED a thorough investigation into the ENTIRETY of trading activity of NITE and UBSS in CGFIA and APCX: MY CLAIMS. Josh Sason/Hanover/ Magna knew CGFIA was a money laundering shell also

<https://www.sec.gov/Archives/edgar/data/1344394/000114420413041432/0001144204-13-041432-index.htm>

ALSO in my claims: Joshua Sason/Hanover Magna. CGFIA. Also my NewLead TCR1426518350699 and FreeSeas TCR1440274395191 separate but related TCR's where NITE was a top trader in both and BOTH TCR's were filed well in advance (years prior) to the Sason/Hanover/Magna February 2019 complaint. Here's one thing the SEC has been consistent about: The SEC ignores the role of executing BD's and MM's in these scams. WHY? Because NITE is the #1 OTCM shell trader. As far as the SEC is concerned Penny stock trading fairies convert worthless certificates into real money. NO! Executing BD's/MM's like NITE do. Did Oppenheimer sell this order flow to NITE? Who ultimately converted these worthless certificates to real money? As the number 1 OTCM money laundering shell trader it is statistically improbable the NITE has never been the focus of an SEC AML complaint. Per my TCR: what does the NITE Compliance Department do exactly? How many SAR's has NITE filed in the last 10 years? In a 2015 SIFMA speech then SEC Enforcement Director Ceresney was "SHOCKED" by the number of BD's filing 1 or ZERO SAR's. That was just 5 years ago. WHEN would NITE file a SAR related to the billions of shares of OTCM money laundering shells it trades like CGFIA and APCX: BEFORE or AFTER it trades those BILLIONS of shares? Does NITE pull markets and alert regulators OR continue to trade billions of shares of OTCM money laundering shells in the face of GLARING AML red flags? In fact, in December 2019 the top traded NITE/VIRT OTCM money laundering shell was ELTZ

<https://www.sec.gov/cgi-bin/browse-edgar?>

[action=getcompany&CIK=0001607281&owner=exclude&count=40&hidefilings=0](https://www.sec.gov/cgi-bin/browse-edgar?action=getcompany&CIK=0001607281&owner=exclude&count=40&hidefilings=0)

The SEC knows the people/entities in ELTZ well

<https://www.sec.gov/litigation/admin/34-46993.htm>

Strata Coal Company and Terrence A. Tecco: Admin. Proc. Rel. No. 34-46993 / December 13, 2002

Strata Coal Company ("Strata" or "the company") is a non-reporting Nevada shell corporation based in Frisco, Texas. Strata's shares are quoted on the Pink Sheets under the symbol SCOC. Until September 2002, the company was known as WesPac Technologies, at which time it changed its name to Strata. 2. Tecco is the sole officer, director, and ...

www.sec.gov

<https://www.sec.gov/news/press-release/2019-16>

SEC.gov | SEC Charges Broker-Dealer and Transfer Agent in Microcap Shell Factory Fraud

The Securities and Exchange Commission today announced charges against a broker-dealer, a transfer agent, and three individuals for their roles in the creation of over a dozen undisclosed "blank check" companies from 2009 to 2014.

Doesn't the NITE/VIRT compliance Department have internet service in Jersey City? As a DIRECT result of the SEC obstructing a complete and thorough investigation into the ENTIRETY of trading activity in APCX and CGFIA, the top NITE/VIRT traded OTCM money laundering shell in December 2019 was AML red flags galore ELTZ. Illegal activity ACTIVELY facilitated by the SEC. The examples cited in this e mail are not exhaustive.

And, for it's part AppTech is up and running again/still

<https://www.sec.gov/cgi-bin/browse-edgar?company=Apptech&owner=exclude&action=getcompany>

Unfortunately, AppTech is still up and running as a direct result of the aforementioned SEC " CLEARLY under estimating" otherwise known as CLEARLY OBSTRUCTING.

In conclusion, The SEC solicits information from whistleblowers like me. The SEC uses whistleblower information to bring actions and then doesn't compensate whistleblowers for their information.

OR

The SEC uses whistleblower information to protect criminality perpetrated on the investing public so that this criminal activity can continue. BOTH are gross dereliction of the stated and MANDATED SEC Whistleblower statutes. To blame a whistleblower for the SEC's EXPLICIT and EXCLUSIVE responsibility to properly vet and distribute whistleblower information within the SEC as an excuse to deny Awards is also criminal activity. The SEC: criminals using whistleblower information to protect other criminals AND deny whistleblower rightful compensation for their information.

I appeal the SEC preliminary determination and wish to file ANOTHER complaint with the SEC IG.

Cheers!

Christopher J Dilorio

Janey,

how long have you been in possession of my Knight Capital TCR? Almost 7 years to the day. How many follow up e mails have I sent the SEC since then?

For 7 fucking years, the SEC has known about JMJ/Keener. I told them

<https://www.sec.gov/litigation/complaints/2020/comp-pr2020-72.pdf>

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA SECURITIES AND EXCHANGE COMMISSION No. COMPLAINT SUMMARY - sec.gov

5. Justin W. Keener, age 45, resides in San Juan, Puerto Rico. During the Relevant Period, Keener was a resident of Miami Beach, Florida. Keener registered the name "JMJ Financial" as a fictitious name in Florida in 2008 and used it to conduct the business described

In February 2019, the SEC brought an action against Joshua Sason/NewLead
I told the SEC about Magna/ Sason ALSO in my 2013 TCR.

<https://www.sec.gov/litigation/litreleases/2019/lr24403.htm>

Joshua Sason, et al. (Release No. LR-24403; Feb. 15, 2019)

Washington, D.C., February 15, 2019 - The Securities and Exchange Commission today announced charges against four individuals and related businesses for their roles in two microcap frauds and unlawful securities offerings.

www.sec.gov

AND, I filed separate but related NewLead and FreeSeas TCR's in 2015

Then there's the UBS AML complaint.

ALSO my claims. For which I sent 10 (TEN) separate Award applications from a commercial fax machine in April/May 2019. AND I have YET to receive even a preliminary determination from the OWB/Norberg IG, I see your "investigation" into my very very serious accusations of Obstruction related to my information was thorough. In short, the SEC has and still is ripping me off.

Janey, be a hun and update my TCR's/Awards cited in this e mail.

And Ms Welshhans, a couple of questions for you:

1) Have you read the FINRA WTFC Keener complaint? Fictitious notes Ring a bell?

Same MO as Sason/Magna/NewLead/FreeSeas etc etc etc

2) WHO executed the Keener OTCM trades in your complaint? Penny stock trading fairies?

YES, NITE was a top trader in BOTH FreeSeas and NewLead

The core business at NITE/VIRT is and ALWAYS has been: abusive naked shorting OTCM (and other) shells to facilitate money laundering.

In short Ms Welshhans, NITE/VIRT converts these worthless certs into real money. NONE of JMJ/Sason/IBC/Ironridge/Asher etc etc etc activity takes place without a willing, corrupt, criminal, executing BD/MM like NITE/VIRT, CDEL etc

Finally, The Keener SEC complaint is FURTHER evidence that FINRA has NO business enforcing US securities LAWS. When FINRA "invited" Keener to a disciplinary hearing almost 7 years ago, Keener told them to "fuck off". FINRA bar meant nothing the last 7 years. EXCEPT JMJ/Keener/NITE ripping off more investors.

Obviously the SEC has/is using my information. I expect to be compensated.

Cheers!

Christopher Dilorio

Whistleblower
[REDACTED]

Mr Peirce,

Congratulations on your nomination as SEC Commissioner. I have read your paper on FINRA lack of accountability. I believe the SEC has abdicated its responsibility to enforce Broker Dealer compliance with the BSA to FINRA BECAUSE it is not accountable. The SEC has not initiated a single stand alone AML complaint.

The Brown Brothers Harriman AML complaint IS my claim. ALL of the entities in the complaint are un named WHY? My SEC and IRS Whistleblower complaints explain why.

Hello, My name is Chris DiIorio. I have filed extensive SEC and IRS Whistleblower complaints alleging a direct link between penny stock money laundering, domestic and foreign entities, Swiss Banks, and executing brokers like KCG and UBS. I can provide overwhelming evidence of SEC obstruction. Please read the FINRA Brown Brothers Harriman AML complaint. This is my claim. All of the entities in the complaint are un named. Why? The SEC is not only obstructing an investigation, they are aiding and abetting the activity. These are not far flung theories. The UBS Whistleblower Birkenfeld and his attorney sent 52,000 accounts to the SEC and DOJ. The DOJ at the influence of President Obama and Hillary Clinton entered into the UBS DPA based on just 4400. What is so egregious is the activity continues unabated today.

Start with the so called August 2012 Knight/KCG trading "glitch". Initial reports say the NYSE was breaking the trades. WHY did they stop. Former KCG CEO Joyce said he had a very frank discussion with then SEC Chair Schapiro where the SEC wanted to send a very strong message to market participants. Why not just continue to break the trades and hit KCG with a hefty fine? That would not create the conditions to grant KCG exception after exception to do their emergency funding which transferred 74% of the company to "glitch" funding participants and ultimate reverse merger partner GETCO. AND, despite claiming to having a "highly liquid balance sheet" KCG had to raise the entire amount of the loss.

A very significant and public event was cited in a WSJ article where immediately following the "glitch" KCG inadvertently sent 4000 worthless securities to JPM in an attempt to secure a tri party financing where JPM guaranteed the loan. This is discussed in my attached TCR's and also the topic in a March 2014 letter I sent to the SEC. In the end, the emergency funding was NOT collateral based. The participants knew exactly what a fraud the KCG balance sheet was. After the stock was decimated to \$3, the deal was a convertible with a conversion price at a 50% discount or \$1.50/ share.

There is much more, but this is a good start.

Recently, KCG did a modified Dutch auction where they "sold" an asset (HotSpot) to an entity both KCG and GETCO were a major shareholder (BATS) KCG CEO Coleman called it a "highly competitive process". Virtually all of the proceeds went to buy back stock from "glitch" financing participants. The purchase price was \$14/share. The stock had never traded there and hasn't since. Reports say 82 million shares were tendered at or BELOW \$14. But they chose to repurchase 23 million shares AT \$14????? I have overwhelming evidence that supports my allegations that the SEC is engaging in criminal obstruction to protect KCG.

1) Current KCG Dan Coleman ran Equities at UBS during the massive REG Sho violations as well as the cross border activity detailed by Whistleblower Birkenfeld. White and Ceresney represented UBS prior to joining the SEC

2) At June 30 2011 KCG/Knight reported just 105 million in working capital with hundreds of millions in worthless securities sitting on its balance sheet. KCG was insolvent

3) The SEC orchestrated the emergency funding for KCG following the so called Aug 2012 trading "glitch"

4) Read FINRA AML complaints against Brown Brothers Harriman. This is my claim. It links penny stock money laundering to executing brokers like KCG, domestic and foreign entities, and Swiss banks. ALL of the entities in the complaint are un named. WHY?

5) The FINRA World Trade Financial AML complaint discusses several entities cited in my claims. The customer the complaint focuses on is Justin Keener. Still very much in business. The red flags cited by FINRA were cited in my claims as well. Yet still no investigation.

6) in July 2015 I contacted Kevin Goodman Dir OCIE for Broker Deals at the SEC. He had never seen my information. The IG OCIE Madoff report mandated the OCIE to vet information. McKessy and Ceresney never sent my info to him

7) I'm sure you are familiar with the Manning v Merrill, KCG, UBS et al litigation. The SEC does not want an investigation into my claims while the litigation is pending.

8) My claims detail ex clearing trading activity by KCG and UBS. despite the glaring red flags in doing so. Ex clearing s the Obligation Warehouse. A NON GUARANTEED SERVICE set up by the SEC and DTCC to allow firms like KCG to circumvent close out requirements of Rule 204. Clearly contrary to the intent of the SEC

authorization in Sec 17a of the 1934 Act to create a system of prompt and timely settlement and to remove impediments there of.

In short, I told the SEC KCG was insolvent in 2011. Rather than investigate and prosecute, they chose to obstruct. The activity in my TCR's pre dates the "glitch". An investigation would show the SEC bailed out a criminal enterprise. Because of the obstruction, the activity continues today unabated in stocks like STBV,VELA,NEWL,FREE, and dozens more. The investing public remains at risk

More to come

Chris Dilorio

From: [REDACTED] (USANYS)" [REDACTED] >

To: [REDACTED] (USANYS)" [REDACTED] >, [REDACTED] (USANYS)"
[REDACTED] >, [REDACTED] (USANYS)" [REDACTED] >

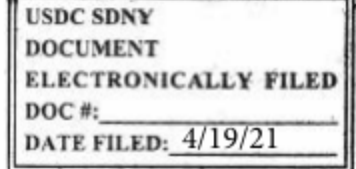
Subject: Opinion on Maxwell Motions

Date: Fri, 16 Apr 2021 22:09:33 +0000

Attachments: Maxwell_Opinion_MTD.pdf

Judge Nathan's opinion on the majority of Maxwell's pretrial motions is attached. She granted Maxwell's motion to sever the perjury counts but denied the remaining motions, except for the suppression motions with respect to the Boies Schiller materials, which she did not address (they will be decided "in due course").

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



United States of America,

—v—

Ghislaine Maxwell,

Defendant.

20-CR-330 (AJN)

ORDER

ALISON J. NATHAN, District Judge:

An arraignment on the S2 Superseding Indictment is scheduled to take place on **April 23, 2021 at 2:30 p.m.** The proceeding will take place in Courtroom 24B of the Daniel Patrick Moynihan Courthouse, 500 Pearl Street, New York, NY.

Given significant public interest, a video feed of the proceeding will be available for viewing in the Jury Assembly Room and Courtroom 9C at the Daniel Patrick Moynihan Courthouse. **The use of any electronic devices during the proceeding in either the Courtroom or the overflow rooms is strictly prohibited.**

Due to social distancing requirements, seating will be limited to approximately 100 members of the public. If capacity is reached, no additional persons will be admitted. Per the S.D.N.Y. COVID-19 Courthouse Entry Program, anyone who appears at any S.D.N.Y. courthouse must complete a questionnaire on the date of the proceeding prior to arriving at the courthouse. All visitors must also have their temperature taken when they arrive at the courthouse. Please see the attached instructions. Completing the questionnaire ahead of time will save time and effort upon entry.

Only persons who meet the entry requirements established by the questionnaire and whose temperatures are below 100.4 degrees will be allowed to enter the courthouse. All visitors

must wear either (i) a properly fitted disposable mask under a cloth mask, with the outer edges of the inner mask pushed against the face, or (ii) a properly fitted FDA-authorized N95 or KN95 mask. Anyone who fails to comply with the COVID-19 protocols that have been adopted by the Court will be required to leave the courthouse. There are no exceptions. For more information, see <https://www.nysd.uscourts.gov/covid-19-coronavirus>.

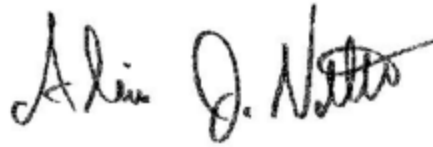
In order to ensure additional public access, the Court will also open a public teleconference line so that members of the public may listen to the audio of the proceeding. Members of the public may call into the public teleconference line by dialing 844-291-6362 and entering access code 2921822. This phone line can accommodate approximately 4,000 callers on a first come, first serve basis. **Any photographing, recording, or rebroadcasting of federal court proceedings is prohibited by law. Violation of these prohibitions may result in fines or sanctions, including being held in contempt of court, removal of court issued media credentials, restricted entry to future hearings, denial of entry to future hearings, or any other sanctions deemed necessary by the Court.**

Pursuant to 18 U.S.C. § 3771(c)(1), the Government must “make their best efforts to see that crime victims are notified of, and accorded, the rights” provided to them in that section. This includes “[t]he right to reasonable, accurate, and timely notice of any public court proceeding . . . involving the crime or of any release . . . of the accused.” *Id.* § 3771(a)(2). So that appropriate logistical arrangements can be made, the Government shall inform the Court’s Chambers by email by April 21, 2021 whether any alleged victims wish to attend the proceeding and whether they will attend in person or by phone. The Court will ensure access.

In addition, defense counsel shall inform the Court's Chambers by email by April 21, 2021, whether any of the Defendant's family members wish to attend the proceeding and whether they will attend in person or by phone. The Court will ensure access.

SO ORDERED.

Dated: April 19, 2021
New York, New York

A handwritten signature in black ink, appearing to read "Alison J. Nathan", written in a cursive style.

ALISON J. NATHAN
United States District Judge

From: Jack Scarola <[REDACTED]>
To: "[REDACTED]" <[REDACTED]>
Cc: "[REDACTED]" <[REDACTED]>, "[REDACTED] (USANYS)" <[REDACTED]>, [REDACTED] <[REDACTED]>, Michael Danchuk <[REDACTED]>
Subject: Re: United States v. Ghislaine Maxwell
Date: Mon, 19 Apr 2021 16:33:18 +0000

[REDACTED] will not attend the scheduled conference, but please continue to keep me informed on her behalf.

On Apr 19, 2021, at 12:27 PM, [REDACTED] <[REDACTED]> wrote:

Jack,

As an update regarding Friday's conference, I'm attaching a scheduling order from the Court. Could you please let us know by tomorrow whether your client plans to attend the conference, and if so, whether she plans to do so by phone or in person?

Thanks,

From: [REDACTED] <[REDACTED]>
Sent: Thursday, April 8, 2021 1:36 PM
To: Jack Scarola <[REDACTED]>
Cc: [REDACTED] <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>
Subject: United States v. Ghislaine Maxwell

Jack,

In light of the superseding indictment adding [REDACTED] [REDACTED] as a statutory victim, our office intends to provide notice of court proceedings to [REDACTED] pursuant to the Crime Victim Rights Act. Would you please let me know whether [REDACTED] would like to receive these notifications directly from our office, or whether they should instead be directed to you?

Additionally, we wanted to let you know that there are two upcoming court appearances in this case:

- Judge Nathan has scheduled an in-person arraignment for April 23rd, at 2:30 p.m., in courtroom 24B at 500 Pearl Street. The Court has issued an order noting that further information about public access, including a public dial-in number, will be posted to the docket sheet.
- The Second Circuit has scheduled a remote oral argument in connection with the defendant's bail appeal for April 26th at 10 a.m. Second Circuit arguments are livestreamed at the following link:
<https://ww2.ca2.uscourts.gov/court.html>

Best,

[REDACTED]

Assistant United States Attorney
Southern District of New York

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

<2021.04.19 Scheduling Order.pdf>

| Privileged and Confidential | Electronic communication is not a secure mode of communication and may be accessed by unauthorized persons. This communication originates from the law firm of Searcy Denney Scarola Barnhart & Shipley, P.A. and is protected under the Electronic Communication Privacy Act, 18 U.S.C. S2510-2521. The information contained in this E-mail message is privileged and confidential under Fla. R. Jud. Admin. 2.420 and information intended only for the use of the individual(s) named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copy of this communication is strictly prohibited. Personal messages express views solely of the sender and shall not be attributed to the law firm. If you received this communication in error, please notify the sender immediately by e-mail or by telephone at [REDACTED] and destroy all copies of the original message. Thank you.

From: "[REDACTED]" <[REDACTED]>

To: "[REDACTED]" <[REDACTED]>

Subject: Request for Assistance - United States v. Maxwell

Date: Mon, 19 Apr 2021 18:37:10 +0000

Good afternoon,

I am one of the federal prosecutors handling the prosecution of Jeffrey Epstein's co-conspirator, Ghislaine Maxwell, in the Southern District of New York under case caption *United States v. Maxwell*, 20 Cr. 330 (AJN). [REDACTED] and [REDACTED] from the FBI provided me with your contact information and suggested you may be able to assist our team in contacting current and former employees of the Palm Beach Police Department who may need to testify at the upcoming trial in our case. In particular, our team expects to introduce evidence gathered during the PBPD's investigation of Epstein in 2005, primarily from the search of Epstein's residence in October 2005, and we will need PBPD witnesses to authenticate that evidence.

Would you be available for a call this week to discuss the particular witnesses we are hoping to contact, please? I can be reached any time on my cellphone at [REDACTED], and am also happy to schedule a time that is convenient for a call.

Thank you very much for your help.

Best,

[REDACTED]

[REDACTED]

Assistant United States Attorney
Southern District of New York
1 St. Andrew's Plaza
New York, NY 10007
[REDACTED]
[REDACTED]

From: [REDACTED] (USANYS)" <[REDACTED]>

To: "[REDACTED] (USANYS)" <[REDACTED]>

Subject: FW: letter (for filing this evening)

Date: Tue, 20 Apr 2021 01:04:39 +0000

Attachments: 2021-04-19_Gov't_response_to_April_19_Order.rd.docx

My edits attached.

From: [REDACTED] <[REDACTED]>

Sent: Monday, April 19, 2021 8:35 PM

To: [REDACTED] (USANYS) <[REDACTED]> [REDACTED] (USANYS) <[REDACTED]>

Cc: [REDACTED] <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>;

[REDACTED] <[REDACTED]>

Subject: letter (for filing this evening)

[REDACTED]

Attached is the draft of the letter we'd propose filing this evening. Thanks!

[REDACTED]
Assistant United States Attorney
Southern District of New York
One Saint Andrew's Plaza
New York, NY 10007
[REDACTED]

From: [REDACTED] (ODAG)" <[REDACTED]>
To: "[REDACTED] (USANYS)" <[REDACTED]>
Cc: "[REDACTED] (USANYS)" <[REDACTED]>
Subject: RE: Epstein
Date: Fri, 01 Mar 2019 15:15:50 +0000

Good morning!

Thank you for reaching out. I have some availability for a phone call today around 1:30/2 p.m. Please let me know if that works for you. I look forward to connecting.

Stacie

From: [REDACTED] (USANYS) <[REDACTED]>
Sent: Thursday, February 28, 2019 5:56 PM
To: Harris, Stacie B. (ODAG) <sbharris@jmd.usdoj.gov>
Cc: [REDACTED] (USANYS) <[REDACTED]>
Subject: Epstein

Hi [REDACTED] and I are the supervisors of the Public Corruption Unit in the Southern District of New York, and we understand you reached out to one of the line AUSAs in our unit, [REDACTED], regarding our Epstein investigation. We wanted to introduce ourselves and connect. Do you have time for a call tomorrow or Monday?

Thanks,

[REDACTED]
Deputy Chief, Public Corruption Unit
U.S. Attorney's Office for the
Southern District of New York
[REDACTED]

EXHIBIT M

From: [REDACTED]
To: [REDACTED]
Subject: Fwd: Next week - meet re: Jeffrey Epstein
Date: Sunday, February 24, 2019 8:18:01 PM

Sent from my iPhone

Begin forwarded message:

From: [REDACTED]
Date: March 3, 2016 at 5:09:55 PM EST
To: [REDACTED]
Subject: RE: Next week - meet re: Jeffrey Epstein

Cool. Talk to you then.

From: [REDACTED]
Sent: Thursday, March 03, 2016 5:05 PM
To: [REDACTED]
Subject: RE: Next week - meet re: Jeffrey Epstein

Tuesday at 4 is good. Thanks.

From: [REDACTED]
Sent: Thursday, March 03, 2016 10:24 AM
To: [REDACTED]
Subject: RE: Next week - meet re: Jeffrey Epstein

Sure. Sounds both intriguing and complicated. Tuesday is better for me than Wednesday. How's Tuesday at 4 pm?

From: [REDACTED]
Sent: Thursday, March 03, 2016 10:08 AM
To: [REDACTED]
Subject: Next week - meet re: Jeffrey Epstein

H [REDACTED]

Earlier this week Pete Skinner and two other lawyers came in to pitch a sex trafficking case against Jeffrey Epstein, a financier with homes abroad, in FL, and in Manhattan. They represent [REDACTED] who claims to have been prostituted by and for

Epstein when she was 16 years old. Epstein apparently had dozens of victims, and it's not clear if/when his criminal conduct stopped. The facts are complicated, there are several related civil cases, and Epstein entered into a non-pros with the SDNY USAO in 2007 that is limited but obviously something to take into account.

All that said, there are aspects of the facts here that are intriguing and I'd like to talk it over with you. I'm free next week Tuesday afternoon and all day Wednesday. Do you have time to meet then?

Thanks,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

United States Attorney's Office
Southern District of New York

[REDACTED]

[REDACTED]

EXHIBIT N

From: [REDACTED]
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: [REDACTED]
Date: Thursday, December 6, 2018 1:38:24 PM

Thanks! I'll stop by now.

From: [REDACTED]
Sent: Thursday, December 6, 2018 1:36 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: [REDACTED]

Just went through my files and found a folder w/ the notes I took and the documents they brought me. Want to come by?

From: [REDACTED]
Sent: Thursday, December 6, 2018 12:36 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: [REDACTED]

Just quickly following up on this – we're trying to get a complete handle on the landscape – thanks!

From: [REDACTED]
Sent: Wednesday, December 05, 2018 21:11
To: [REDACTED]
Cc: [REDACTED]
Subject: Fwd: [REDACTED]

Do you have any notes and/or records from your meeting with Skinner? If so can you please send them our way? Also did you meet again with him or anyone else relating to Epstein?

Thanks,

[REDACTED]
Sent from my iPhone

From: [REDACTED]

SDNY_GM_02742760

EFTA00039803

Sent: Friday, November 30, 2018 4:02 PM

To: [REDACTED]
[REDACTED]
[REDACTED]

Subject: FW: [REDACTED]

From: Peter Skinner <PSkinner@BSFLLP.com>

Sent: Tuesday, March 8, 2016 12:28 PM

To: [REDACTED] (cc: [REDACTED])

Cc: [REDACTED] Sigrid McCawley

Subject: RE: [REDACTED]
[REDACTED]

If you haven't already seen it, the [Post](#) reported today on Jeffrey Epstein's continued relationships with young women.

<http://pagesix.com/2016/03/08/jeffrey-epsteins-east-side-mansion-houses-russian-playmates/>

Best,
Pete

From: Peter Skinner

Sent: Monday, February 29, 2016 10:13 PM

To: [REDACTED]

Cc: [REDACTED] Sigrid McCawley

Subject: Re: [REDACTED]
[REDACTED]

I am adding Sigrid McCawley to this email chain as well. As we mentioned earlier today, Sigrid is one of the lead attorneys on the case and knows both [REDACTED] and the facts very well. Please include Sigrid in any follow-up that you may.

Best,
Pete

SDNY_GM_02742761

EFTA00039804

From: Peter Skinner <pskinner@bsfllp.com>

Date: Monday, February 29, 2016 at 10:03 PM

To: [REDACTED]

Cc: [REDACTED]
[REDACTED]

Subject: [REDACTED]
[REDACTED]

Thank you again for meeting with us today. We very much appreciate your time. I am attaching the following documents for your review:

1. Complaint in the defamation case against Ghislaine Maxwell (just today, Judge Sweet denied Maxwell's motion to dismiss today);
2. Declarations that [REDACTED] filed in the CVRA case;
3. The Rule 56.1 statement recently filed in the CVRA case;
4. The redacted 302

Please let us know what other information we can provide or if you have any further questions.

Best,
Pete

The information contained in this electronic message is confidential information intended only for the use of the named recipient(s) and may contain information that, among other protections, is the subject of attorney-client privilege, attorney work product or exempt from disclosure under applicable law. If the reader of this electronic message is not the named recipient, or the employee or agent responsible to deliver it to the named recipient, you are hereby notified that any dissemination, distribution, copying or other use of this communication is strictly prohibited and no privilege is waived. If you have received this communication in error, please immediately notify the sender by replying to this electronic message and then deleting this electronic message from your computer.
[v.1]

SDNY_GM_02742762

EFTA00039805

EXHIBIT M

From: [REDACTED]
Subject: Fwd: Next week - meet re: Jeffrey Epstein
Date: Sunday, February 24, 2019 8:18:01 PM

Sent from my iPhone

Begin forwarded message:

From: [REDACTED]
Date: March 3, 2016 at 5:09:55 PM EST
To: [REDACTED]
Subject: RE: Next week - meet re: Jeffrey Epstein

Cool. Talk to you then.

From: [REDACTED]
Sent: Thursday, March 03, 2016 5:05 PM
To: [REDACTED]
Subject: RE: Next week - meet re: Jeffrey Epstein

Tuesday at 4 is good. Thanks.

From: [REDACTED]
Sent: Thursday, March 03, 2016 10:24 AM
To: [REDACTED]
Subject: RE: Next week - meet re: Jeffrey Epstein

Sure. Sounds both intriguing and complicated. Tuesday is better for me than Wednesday. How's Tuesday at 4 pm?

From: [REDACTED]
Sent: Thursday, March 03, 2016 10:08 AM
To: [REDACTED]
Subject: Next week - meet re: Jeffrey Epstein

Hi [REDACTED]

Earlier this week Pete Skinner and two other lawyers came in to pitch a sex trafficking case against Jeffrey Epstein, a financier with homes abroad, in FL, and in Manhattan. They represent [REDACTED] who claims to have been prostituted by and for

Epstein when she was 16 years old. Epstein apparently had dozens of victims, and it's not clear if/when his criminal conduct stopped. The facts are complicated, there are several related civil cases, and Epstein entered into a non-pros with the SDNY USAO in 2007 that is limited but obviously something to take into account.

All that said, there are aspects of the facts here that are intriguing and I'd like to talk it over with you. I'm free next week Tuesday afternoon and all day Wednesday. Do you have time to meet then?

Thanks,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

United States Attorney's Office

Southern District of New York

[REDACTED]

[REDACTED]

EXHIBIT N

From: [REDACTED]
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: [REDACTED]
Date: Thursday, December 6, 2018 1:38:24 PM

Thanks! I'll stop by now.

From: [REDACTED]
Sent: Thursday, December 6, 2018 1:36 PM
To: [REDACTED] <[REDACTED]>
Cc: [REDACTED] <[REDACTED]>; Kurland, Abigail (USANYS) <[REDACTED]>
Subject: RE: [REDACTED]

Just went through my files and found a folder w/ the notes I took and the documents they brought me. Want to come by?

From: [REDACTED] <[REDACTED]>
Sent: Thursday, December 6, 2018 12:36 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: [REDACTED]

Just quickly following up on this – we're trying to get a complete handle on the landscape – thanks!

From: [REDACTED]
Sent: Wednesday, December 05, 2018 21:11
To: [REDACTED]
Cc: [REDACTED] <[REDACTED]>; [REDACTED]
<[REDACTED]>
Subject: Fwd: [REDACTED]

Amanda,

Do you have any notes and/or records from your meeting with Skinner? If so can you please send them our way? Also did you meet again with him or anyone else relating to Epstein?

Thanks,

[REDACTED]

Sent from my iPhone

From: Kramer, Amanda (USANYS) <AKramer@usa.doj.gov>

Sent: Friday, November 30, 2018 4:02 PM

To: [REDACTED] (USANYS) <[REDACTED]>; [REDACTED]
(USANYS) <[REDACTED]> [REDACTED]
<[REDACTED]>
Subject: FW: [REDACTED]

From: Peter Skinner [REDACTED]
Sent: Tuesday, March 8, 2016 12:28 PM
To: [REDACTED]
Cc: StanPottinger [REDACTED]; brad [REDACTED] Sigrid McCawley
[REDACTED]
Subject: RE: [REDACTED]

[REDACTED]

If you haven't already seen it, the [Post](#) reported today on Jeffrey Epstein's continued relationships with young women.

<http://pagesix.com/2016/03/08/jeffrey-epsteins-east-side-mansion-houses-russian-playmates/>

Best,
Pete

From: Peter Skinner
Sent: Monday, February 29, 2016 10:13 PM
To: [REDACTED]
Cc: StanPottinger [REDACTED]; brad [REDACTED]; Sigrid McCawley
Subject: Re: [REDACTED]

[REDACTED]

I am adding Sigrid McCawley to this email chain as well. As we mentioned earlier today, Sigrid is one of the lead attorneys on the case and knows both [REDACTED] and the facts very well. Please include Sigrid in any follow-up that you may.

Best,
Pete

SDNY_GM_02742761

EFTA00039811

From: Peter Skinner - [REDACTED]
Date: Monday, February 29, 2016 at 10:03 PM
To: [REDACTED]
Cc: "[StanPottinger](#)" [REDACTED]
"[brad](#)" [REDACTED]
Subject: [REDACTED]

[REDACTED]

Thank you again for meeting with us today. We very much appreciate your time. I am attaching the following documents for your review:

1. Complaint in the defamation case against Ghislaine Maxwell (just today, Judge Sweet denied Maxwell's motion to dismiss today);
2. Declarations that [REDACTED] filed in the CVRA case;
3. The Rule 56.1 statement recently filed in the CVRA case;
4. The redacted 302

Please let us know what other information we can provide or if you have any further questions.

Best,
Pete

The information contained in this electronic message is confidential information intended only for the use of the named recipient(s) and may contain information that, among other protections, is the subject of attorney-client privilege, attorney work product or exempt from disclosure under applicable law. If the reader of this electronic message is not the named recipient, or the employee or agent responsible to deliver it to the named recipient, you are hereby notified that any dissemination, distribution, copying or other use of this communication is strictly prohibited and no privilege is waived. If you have received this communication in error, please immediately notify the sender by replying to this electronic message and then deleting this electronic message from your computer.
[v.1]

From: "[REDACTED]" <[REDACTED]>
To: Brad Edwards <[REDACTED]>, Brittany Henderson <[REDACTED]>
Cc: "[REDACTED]" <[REDACTED]>, "[REDACTED]" (USANYS) <[REDACTED]>
Subject: RE: United States v. Ghislaine Maxwell
Date: Tue, 20 Apr 2021 21:32:54 +0000

Hi Brad and Brittany—

Just following up on this. Thanks very much.

From: [REDACTED]
Sent: Monday, April 19, 2021 12:30 PM
To: 'Brad Edwards' <[REDACTED]>; 'Brittany Henderson' <[REDACTED]>
Cc: [REDACTED] <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>
Subject: RE: United States v. Ghislaine Maxwell

Brad and Brittany,

As an update regarding Friday's conference, I'm attaching a scheduling order with additional information. Could you please let us know by tomorrow whether your client plans to attend, and if so, whether she intends to attend in person or by phone?

Thanks,

[REDACTED]

From: [REDACTED]
Sent: Thursday, April 8, 2021 1:19 PM
To: Brad Edwards <[REDACTED]>; Brittany Henderson <[REDACTED]>
Cc: [REDACTED] <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>
Subject: United States v. Ghislaine Maxwell

Hi Brad and Brittany,

We wanted to let you know that there are two upcoming court appearances in this case:

- Judge Nathan has scheduled an in-person arraignment for April 23rd, at 2:30 p.m., in courtroom 24B at 500 Pearl Street. The Court has issued an order noting that further information about public access, including a public dial-in number, will be posted to the docket sheet.
- The Second Circuit has scheduled a remote oral argument in connection with the defendant's bail appeal for April 26th at 10 a.m. Second Circuit arguments are livestreamed at the following link:
<https://ww2.ca2.uscourts.gov/court.html>

Best,

[REDACTED]

[REDACTED]

Assistant United States Attorney
Southern District of New York



From: [REDACTED]

To: Jack Scarola [REDACTED]

Cc: [REDACTED]

Subject: Judge Nathan Order

Date: Wed, 21 Apr 2021 15:45:22 +0000

Attachments: 2020.07.23_Order_re_Local_Rule_23.1.pdf; SDNY_Local_Rules.pdf

Hi Jack,

Because the *United States v. Maxwell*, 20 Cr. 330 (AJN) indictment has been expanded to include your client, the attached order previously issued by Judge Nathan in this case now applies to all attorneys who represent [REDACTED]. The Order reminds counsel for parties and witnesses to comply with SDNY Local Rule 23.1, which begins on page 94 of the second pdf attached to this email. Though I know you are already in compliance with the rule, I wanted to pass it along for your and your colleagues' awareness. As always, please don't hesitate to reach out if you have any questions or concerns.

Thanks,

[REDACTED]
Assistant United States Attorney
Southern District of New York
1 St. Andrew's Plaza
New York, NY 10007
[REDACTED]

From: Laura Menninger <[REDACTED]>

To: "'NathanNYSDChambers@nysd.uscourts.gov'"

<[REDACTED]>

Cc: "[REDACTED]" <[REDACTED]>, "[REDACTED]"

<[REDACTED]>, "[REDACTED] (USANYYS)" <[REDACTED]>,

"[REDACTED]" <[REDACTED]>, Jeff Pagliuca

[REDACTED]

"Bobbi Sternheim" <[REDACTED]>

[REDACTED], Nicole Simmons [REDACTED]

Subject: US v. Maxwell - [Request for 120 or 180-day Adjournment of Trial]

Date: Thu, 22 Apr 2021 15:22:17 +0000

Attachments: 2021.04.22_Defts_Letter_for_Adjournment.pdf

Judge Nathan -

Pursuant to this Court's Order of April 20, 2021 (Dkt. 221), attached please find counsel's Letter Motion for an Adjournment of the trial.

Counsel for Ms. Maxwell request redaction of their other clients' names and case numbers from this Letter Motion pursuant to Rule of Professional Conduct 1.6 which prohibits lawyers from revealing confidential information related to a client even where that information is publicly available. *See In Re. Anonymous*, 654 N.E. 2d 1128 (Ind. 1995) (lawyer violated Rule 1.6 by disclosing information relating to representation of client, even though information "was readily available from public sources and not confidential in nature"); *In re Bryan*, 61 P.3d 641 (Kan. 2003) (lawyer violated Rule 1.6 by disclosing, in court documents, existence of defamation suit against former client); *State ex rel. Okla. Bar Ass'n v. McGee*, 48 P.3d 787, 791 (Okla. 2002) (a lawyer's duty of confidentiality attaches "to all information relating to the representation, whatever its source").

Upon direction of the Court, counsel will file either the redacted or unredacted version of this letter on the public docket.

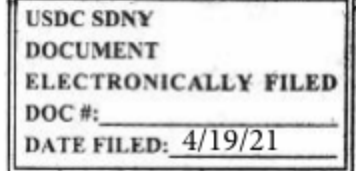
Best regards,
Laura Menninger

Laura A. Menninger | Partner

Haddon, Morgan & Foreman, P.C.

[REDACTED] CO 80203

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



United States of America,

—v—

Ghislaine Maxwell,

Defendant.

20-CR-330 (AJN)

ORDER

ALISON J. NATHAN, District Judge:

An arraignment on the S2 Superseding Indictment is scheduled to take place on **April 23, 2021 at 2:30 p.m.** The proceeding will take place in Courtroom 24B of the Daniel Patrick Moynihan Courthouse, 500 Pearl Street, New York, NY.

Given significant public interest, a video feed of the proceeding will be available for viewing in the Jury Assembly Room and Courtroom 9C at the Daniel Patrick Moynihan Courthouse. **The use of any electronic devices during the proceeding in either the Courtroom or the overflow rooms is strictly prohibited.**

Due to social distancing requirements, seating will be limited to approximately 100 members of the public. If capacity is reached, no additional persons will be admitted. Per the S.D.N.Y. COVID-19 Courthouse Entry Program, anyone who appears at any S.D.N.Y. courthouse must complete a questionnaire on the date of the proceeding prior to arriving at the courthouse. All visitors must also have their temperature taken when they arrive at the courthouse. Please see the attached instructions. Completing the questionnaire ahead of time will save time and effort upon entry.

Only persons who meet the entry requirements established by the questionnaire and whose temperatures are below 100.4 degrees will be allowed to enter the courthouse. All visitors

must wear either (i) a properly fitted disposable mask under a cloth mask, with the outer edges of the inner mask pushed against the face, or (ii) a properly fitted FDA-authorized N95 or KN95 mask. Anyone who fails to comply with the COVID-19 protocols that have been adopted by the Court will be required to leave the courthouse. There are no exceptions. For more information, see <https://www.nysd.uscourts.gov/covid-19-coronavirus>.

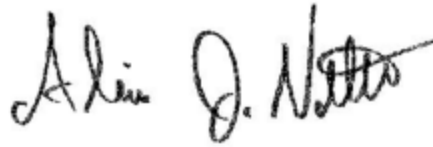
In order to ensure additional public access, the Court will also open a public teleconference line so that members of the public may listen to the audio of the proceeding. Members of the public may call into the public teleconference line by dialing 844-291-6362 and entering access code 2921822. This phone line can accommodate approximately 4,000 callers on a first come, first serve basis. **Any photographing, recording, or rebroadcasting of federal court proceedings is prohibited by law. Violation of these prohibitions may result in fines or sanctions, including being held in contempt of court, removal of court issued media credentials, restricted entry to future hearings, denial of entry to future hearings, or any other sanctions deemed necessary by the Court.**

Pursuant to 18 U.S.C. § 3771(c)(1), the Government must “make their best efforts to see that crime victims are notified of, and accorded, the rights” provided to them in that section. This includes “[t]he right to reasonable, accurate, and timely notice of any public court proceeding . . . involving the crime or of any release . . . of the accused.” *Id.* § 3771(a)(2). So that appropriate logistical arrangements can be made, the Government shall inform the Court’s Chambers by email by April 21, 2021 whether any alleged victims wish to attend the proceeding and whether they will attend in person or by phone. The Court will ensure access.

In addition, defense counsel shall inform the Court's Chambers by email by April 21, 2021, whether any of the Defendant's family members wish to attend the proceeding and whether they will attend in person or by phone. The Court will ensure access.

SO ORDERED.

Dated: April 19, 2021
New York, New York

A handwritten signature in black ink, appearing to read "Alison J. Nathan", written over a horizontal line.

ALISON J. NATHAN
United States District Judge

From:

To:

Cc:

Subject: RE: US v Maxwell - [conferrals regarding pretrial disclosures & redactions to replies]

Date: Thu, 22 Apr 2021 21:47:47 +0000

Attachments: 2021-04-22_GM_letter_re_Reply_Brief_Exhibit_L.pdf

Inline-Images: image001.jpg

█,

Per the Court's order today (Dkt. 232), I intend to file the attached letter on ECF this evening. Please let me know if there is anything you would like to discuss by 8 pm if possible.

Thanks,

█

From:

Sent: Tuesday, April 20, 2021 7:33 PM

To:

Cc:

Subject: RE: US v Maxwell - [conferrals regarding pretrial disclosures & redactions to replies]

Great. I will wait to file the briefs until I see your letter hit the docket.

From:

Sent: Tuesday, April 20, 2021 7:32 PM

To:

Cc:

Subject: RE: US v Maxwell - [conferrals regarding pretrial disclosures & redactions to replies]

Thanks, █. I'm going to file the letter in a few minutes.

From:

Sent: Tuesday, April 20, 2021 7:30 PM

To:

Cc:

Subject: RE: US v Maxwell - [conferrals regarding pretrial disclosures & redactions to replies]

This looks good to me, █. I will go ahead and file Reply Briefs 1 (NPA) and 5 (Severance) on the public docket in unredacted form, with a slip sheet for Ex. A to the NPA brief indicating that it is being filed under seal.

EFTA00039820

From: [REDACTED]
Sent: Tuesday, April 20, 2021 7:13 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: US v Maxwell - [conferrals regarding pretrial disclosures & redactions to replies]

[REDACTED],

As discussed, attached is the letter that I plan to file this evening. Please let me know if there is anything you would like to discuss.

Thanks,

[REDACTED]

From: [REDACTED]
Sent: Tuesday, April 20, 2021 2:05 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: US v Maxwell - [conferrals regarding pretrial disclosures & redactions to replies]

[REDACTED] –

Following-up on [REDACTED] email, we are not seeking any redactions. As a general matter, the redactions we proposed in our reply briefs are almost entirely because the information was designated as Confidential by the government under the Protective Order. Accordingly, you are free to justify to the court any redactions you think are necessary. Our specific positions on the redactions in each brief are set forth below. Please confirm that the proposed course of action with respect to each brief is acceptable.

Reply Brief 1

The redactions relate to information designated as Confidential by the government under the Protective Order. The defense has no objection to removing the redaction on page 5 and filing the brief and Exhibit A on the public record. Given that the government takes no position about the redaction on page 5, but does want Exhibit A to remain under seal, we propose the following: (1) we will file the brief on the docket without redactions, but we will file Exhibit A under seal; and (2) the government can argue its position to the court in its letter that Exhibit A should remain under seal. If the judge does not agree, we will file Exhibit A on the docket at that time.

Reply Brief 3

The redactions in the brief all relate to the names of AUSAs, the names of accusers, and [REDACTED]. As to the accusers and [REDACTED], the defense has no objection to removing those redactions. As to the AUSAs, we made those redactions as a courtesy because we did not think it was necessary or appropriate to publicly name the AUSAs. The defense takes no position with respect to those redactions.

As for the exhibits, we filed certain exhibits under seal because they were designated as Confidential by the government under the Protective Order. The defense has no objection to filing all of the exhibits on the public record, although we agree that email addresses and other contact information for third parties should be redacted pursuant to the court's local rules. You point out that the court has already adopted the government's proposed redactions to Exhibits J and O. The defense is certainly prepared to follow those redactions. But since the government will need to justify the need for other redactions to the court, it makes more sense for the government to explain to the court in its letter that it would like to follow the redactions already adopted by the court for Exhibits J and O.

Given the disagreement among the parties, we will not file the brief or the exhibits on the docket and the government can argue its position to the court in its letter.

Reply Brief 5

The defense does not believe the redaction on p.4 is necessary. Given the agreement between the parties, we will file the brief unredacted.

Reply Brief 6

The redactions relate to information designated as Confidential by the government under the Protective Order. The defense has no objection to removing the redactions and filing the brief on the public record. Given that the government wants to keep the redactions, we will not file the brief on the docket and the government can argue its position to the court in its letter.

Reply Brief 10

The redactions relate to information designated as Confidential by the government under the Protective Order. The defense has no objection to removing the redactions and filing the brief and Exhibit A on the public record. Given that the government wants to keep the redactions and keep Exhibit A under seal, we will not file either document on the docket and the government can argue its position to the court in its letter.

Please let me know if you would like to discuss.

Regards,

[REDACTED]

From: [REDACTED]
Sent: Monday, April 19, 2021 8:17 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: US v Maxwell - [conferrals regarding pretrial disclosures & redactions to replies]

[REDACTED]

We can confirm for 3:00 pm EST tomorrow. Please use the following dial-in number:

[REDACTED]

We will write separately regarding the redactions that you propose.

Thanks,

[REDACTED]

From: [REDACTED]
Sent: Monday, April 19, 2021 4:55 PM
To: [REDACTED]
Cc: [REDACTED]

[REDACTED]
Subject: RE: US v Maxwell - [conferrals regarding pretrial disclosures & redactions to replies]

[REDACTED],
We are available to speak tomorrow after 2:30 pm EST. On the issue of redactions, on Friday, Judge Nathan ordered the parties to docket the April 1, 2021 joint letter or to propose redactions by April 19, 2021. (Dkt. 203). We do not believe any redactions are necessary to the letter. Assuming you agree, will you please docket the letter since you wrote the letter? If you would like to discuss, please let us know.

As to the redactions to the undocketed Reply Briefs and certain exhibits you proposed being filed under seal, below please find our position for inclusion in a letter. If you would like to discuss tomorrow, please let us know.

Reply Brief 1

The Government takes no position on the defendant's proposed redaction on page 5 of Reply Brief 1. The defense submitted Exhibit A to Reply Brief 1 under seal and the Government agrees that Exhibit A should remain sealed in order to protect the privacy interests of victims and third parties.

Reply Brief 3

The Government agrees with the defense's proposed redactions to Reply Brief 3, which are narrowly tailored to cover information implicating the personal privacy interests of victims and third parties. Further, the proposed redactions are consistent with the redactions ordered by the Court on March 18, 2021. (Dkt. 168).

As to the exhibits to Reply Brief 3, the defense submitted Exhibits L, M, and N under seal. The Government filed Exhibit L in connection with its Omnibus Memorandum of Law in Opposition to the Defendant's Pretrial Motions as Exhibit 6. Exhibit 6 was filed without any redactions and accordingly, the Government does not object to the public filing of Exhibit L. The Government does not object to the public filing of Exhibits M and N, but respectfully submits that the names and email addresses/contact information of third parties should be redacted from Exhibits M and N to protect the privacy interests of third parties.

The defense also submitted Exhibits J and O to Reply Brief 3 under seal. The Government filed Exhibits 5 and 7 to its opposition, which are, respectively, redacted versions of Exhibits J and O. See Dkt. 204. The Government had set forth proposed redactions to Exhibits 5 and 7 in order to protect the privacy interests of third parties, which the Court adopted on March 18, 2021 (see Dkt. 168). Accordingly, the Government respectfully submits that the defense should redact Exhibits J and O to Reply Brief 3 to reflect the redactions approved by the Court and reflected in the publicly filed versions of Exhibits 5 and 7 to the Government's opposition.

Reply Brief 5

The Government respectfully submits that there is no basis under the applicable standard to redact the language that the defendant proposes redacting in Reply Brief 5 as it refers to language contained in the publicly-filed Indictment in this case. The information in the Indictment is part of the public record and, therefore, has a diminished privacy interest.

Reply Brief 6

The Government agrees with the defense's proposed redactions to Reply Brief 6, which are narrowly tailored to cover information implicating the personal privacy interests of third parties. The proposed redactions are consistent with the proposed redactions requested by the Government on pages 158 to 159 and 163 of its opposition to the defendant's pre-trial motions, which the Court granted on March 18, 2021. (Dkt. 168).

Reply Brief 10

The Government agrees with the defense's proposed redactions to Reply Brief 10, which are narrowly tailored to cover information implicating the personal privacy interests of third parties and are consistent with prior redactions in earlier briefing. The Government further agrees that Exhibit A to Reply Brief 10 should be filed under seal to protect the personal privacy interests of the third party implicated in the document.

Thanks,

[REDACTED]

From: [REDACTED]

Sent: Monday, April 19, 2021 12:31 PM

To: [REDACTED]

Cc: [REDACTED]

Subject: US v Maxwell - [conferrals regarding pretrial disclosures & redactions to replies]

Counsel –

I am writing to schedule a time for counsel to formally confer on two issues.

First, we need to confer regarding the pretrial disclosure deadlines, as directed in the Court's Friday order (Dkt. 207 at 34). Although we tentatively discussed some possible deadlines while we were together last week, the Court's opinion includes other upcoming deadlines we did not discuss and we may need to adjust our proposals based on her opinion.

Second, we need to confer regarding redactions to the as yet undocketed Replies in support of our Pretrial Motions (Dkt. 205).

We are generally available tomorrow (Tuesday) for a call. Please let me know a time that works from your end and I can circulate a dial-in number.

Thanks,

[REDACTED]

From: "[REDACTED]" <[REDACTED]>
To: Nathan NYSD Chambers <[REDACTED]>
Cc: "[REDACTED]" <[REDACTED]>, [REDACTED] (USANYS)" <[REDACTED]>, [REDACTED] <[REDACTED]>

Subject: US v. Maxwell, 20 Cr. 330 (AJN) - Government Request for Redactions

Date: Fri, 23 Apr 2021 15:41:04 +0000

Attachments: 2021-04-23_Gov't_letter_re_proposed_redactions_to_GM_17(c)_filings.pdf;
Ex. B_2021.04.05_BSF_Reply_re_Maxwell_Rule_17(c)_Subpoena_-_Prpsd_Redact.._[Government_Proposed_Redactions].pdf;
2021.04.05_BSF_Reply_re_Maxwell_Rule_17(c)_Subpoena_[Government_Proposed_Redactions].pdf;
2021.04.19_LAM_Joint_Letter_with_BSF_re_redactions_in_Rule_17_pleadings_[Government_Proposed_Redactions].pdf;
2021.04.02_Defts_Resp_to_BSF_Ltr_Motn_to_Quash_Rule_17_Sub_[Government_Proposed_Redactions].pdf;
Ex. A_2021.04.02_Defts_Resp_to_BSF_Ltr_Motn_to_Quash_Rule_17_Sub_-_Prpsd.._[Government_Proposed_Redactions].pdf

Good morning,

Attached please find a letter requesting certain redactions to filings regarding the defendant's application for a Rule 17(c) subpoena in the above-referenced case, which was just filed on ECF. In addition, attached please find the Government's proposed redactions to the relevant filings from defense counsel and Boies Schiller Flexner LLP.

Respectfully submitted,

[REDACTED]
Assistant United States Attorney
Southern District of New York
1 St. Andrew's Plaza
New York, NY 10007
[REDACTED]
[REDACTED]



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

April 23, 2021

BY ECF

The Honorable Alison J. Nathan
United States District Court
Southern District of New York
United States Courthouse
40 Foley Square
New York, New York 10007

Re: *United States v. Ghislaine Maxwell*, 20 Cr. 330 (AJN)

Dear Judge Nathan:

The Government respectfully submits this letter in response to the Court's Order dated April 21, 2021, which directed the Government to submit any requests for redaction of information contained in filings regarding the defense's proposed Rule 17(c) subpoena. (Dkt. No. 226). After reviewing the relevant filings, the Government seeks a limited number of redactions, which are narrowly tailored to protect the privacy interests of third parties. In particular, the Government respectfully requests that the Court permit the redaction of the names and identifying information of particular third parties referenced in the defense's response to the objections of Boies Schiller Flexner LLP ("BSF") to the defense's proposed Rule 17(c) subpoena, BSF's reply, and the April 19, 2021 joint letter addressing the redactions to those same documents. Today the Government is submitting to the Court by email its proposed redactions to those documents, which the Government respectfully requests be filed under seal.

These proposed redactions are consistent with the three-part test articulated by the Second Circuit in *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110 (2d Cir. 2006). Although these documents are judicial documents that are subject to the common law presumption of access, the

proposed redactions are narrowly tailored to protect the privacy interests of third parties referenced in the documents. These redactions are thus consistent with similar, tailored redactions permitted by the Court in this case to protect the privacy interests of third parties. Accordingly, the Government respectfully requests that the Court adopt the proposed redactions.

The Government has conferred with defense counsel and counsel from BSF, both of whom indicated that they take no position on the Government's redaction requests.

Respectfully submitted,

AUDREY STRAUSS
United States Attorney

By: _____

A black rectangular redaction box covering the signature of the Assistant United States Attorney.

Assistant United States Attorneys
Southern District of New York

A black rectangular redaction box covering the contact information of the Assistant United States Attorneys.

Cc: All Counsel of Record (By ECF)

From: Chris Dilorio <[REDACTED]>

To: [REDACTED]

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

Date: Mon, 09 Nov 2020 13:08:35 +0000

Attachments: KCG_Appendix_3-20_13_penultimate.docx; KCG_TCR_3-20-13-penultimate_draft.pdf; KCG_TCR_3-20-13-penultimate_draft.docx; KCG_Appendix_3-20_13_penultimate.pdf; Cifu.jpg; Blostein.jpg; KCGMarch2017.jpg

Janey et al: the record

Chock full of fraud: the KCG SEC filed disclosure related to the VIRT acquisition: 1Q2017

<https://www.sec.gov/Archives/edgar/data/1569391/000119312517129844/d359346dex991.htm>

EX-99.1 - SEC

Daniel Coleman, Chief Executive Officer of KCG, said, "The first quarter of 2017 was marked by historic low market volatility. Realized intraday volatility for the S&P 500 posted the lowest quarterly average in 55

years while U.S. equity market volumes and bid-ask spreads contracted from a year ago. Despite all of this, retail investors provided a pocket of strength in the U.S. equity and ...

www.sec.gov

Once upon a time, not too long ago:

Tangible book value calculation used to value KCG in the VIRT transaction prior to Cifu writing down BILLIONS in naked short fails prior to the transaction closing 7/31/2017: \$18.63

Number of Sell Side questions on tangible book calculation in 3Q2020: ZERO

Sell Side questions on the ballooning balance sheet fraud/shell game: ZERO

Sell Side questions on cash OTCM business: ZERO

Disclosures by Cifu on OTCM share volumes trading money laundering shells like ENZC,VISM,ABCE,OPTI,SFOR, etc etc etc: ZERO

<https://www.fool.com/earnings/call-transcripts/2020/11/06/virtu-financial-inc-virt-q3-2020-earnings-call-tra/>



Virtu Financial Inc (VIRT) Q3 2020 Earnings Call Transcript | The Motley Fool

Virtu Financial Inc (VIRT) Q3 2020 Earnings Call Transcript VIRT earnings call for the period ending September 30, 2020.

www.fool.com

No tough questions AGAIN. Especially when there's a \$10 mil/month buyback. NITE/VIRT is grossly insolvent AGAIN,STILL,CONSTANTLY. EVERY Sell Side analyst knows this. The SEC has known this for years. This SEC facilitated massive fraud on the public must end.

Cheers!

Christopher J Dilorio

Whistleblower

From: Chris Dilorio <[REDACTED]>

Sent: Friday, November 6, 2020 7:09 AM

[REDACTED]

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

Janey et al,

NITE/VIRT just released 3Q2020 earnings. A direct result of a massive, ongoing, SEC facilitated fraud on the public the SEC is mandated to protect

The Balance sheet fraud shell game continues.

https://www.sec.gov/Archives/edgar/data/1592386/000110465920122134/tm2034848d1_ex99-1.htm

for the sell siders to ask on the earnings Call:

Tangible book BEFORE we get into mechanics of the massive, ongoing accounting fraud as a direct result of illegal naked shorting OTCM (and other) shells:

I get less than \$2/sh. Tell me where I'm wrong.

But, it's MUCH MUCH MUCH worse than that;

Account receivable : \$1.88 billion

Payable: \$675 million

Difference: \$1.2 billion

AR is where NITE books naked short fails as a result of self clearing. No intention/can't deliver. More accurately: a liability

Further: prior commitment on this "asset": settlement. Nothing NITE/VIRT can convert to cash for company use.

Also:

Trading assets: the old securities owned

Trading liabilities: the old securities sold not yet purchased

Structural liability as a result of naked shorting. Propped up/off set by securities owned.

NITE/VIRT is grossly insolvent STILL/AGAIN/CONSTANTLY.

And, no breakdown of the vast driver of trading revenue: US equity market Making

Did NITE/VIRT exit the extremely low tech/cash OTCM trading business? NOPE

This illegal activity is extremely profitable. Virtually riskless in fact. AND is the driver of trading revenue. WHY the VIRT/KCG merger was done .

Abusive naked shorting OTCM/other shells to facilitate money laundering is and always has been the core business at NITE. The SEC knows this. Where are disclosures in SEC filings of this high AML risk business? You won't find any. Cifu stopped reporting post merger. Not in Sell Side models either. INTENTIONALLY misleading the investing public as to the true nature of the NITE/VIRT business model.

In short: absolutely NOTHING has changed since the so called "glitch" as a direct result of SEC corruption/obstruction. With help from the SDNY and Sell Side analysts covering NITE/VIRT

Cheers!

Christopher J Dilorio

Whistleblower

From: Chris Dilorio <[REDACTED]>

Sent: Wednesday, October 14, 2020 9:00 AM

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

The corrupt, criminal relationship with Handler/Jefferies as I have stated is NOT the only corrupt,criminal relationship the SEC/SDNY have with members of their respective "do not investigate lists". AQR, Blackstone as well as Jay Clayton good friend Glenn Hutchins. Hutchins also worked at Blackstone with Schwarzman prior to founding Silver Lake. Hutchins bought SunGard. Then sold it to FIS. This transaction was the basis of the formation of North Island with former NASDAQ CEO Greifeld. North Island is a top shareholder of the criminal enterprise NITE/VIRT. More context: Greifeld was a Director UK/NJ company called Automated Securities Clearance Ltd

<https://find-and-update.company-information.service.gov.uk/company/03385409/officers>

AUTOMATED SECURITIES CLEARANCE (EUROPE) LIMITED - Officers (free information from Companies House)

AUTOMATED SECURITIES CLEARANCE (EUROPE) LIMITED - Free company information from Companies House including registered office address, filing history, accounts, annual return, officers, charges, business activity

find-and-update.company-information.service.gov.uk

Sold to SunGard. Greifeld then became CEO at SunGard. He wasn't at SunGard very long. Then made the jump to CEO of NASDAQ. Curious to say the least. Shortly after becoming NASDAQ CEO, NASDAQ bought the BRUT ECN from SunGard. Self dealing? MUCH WORSE

<http://ir.nasdaq.com/static-files/6b1ca278-75f0-4259-9372-5b3351126a8b>

ir.nasdaq.com

1 2 1 e < 2 h " ' 21 e < 1 6 \$ 8; 1 < 7 6 = 23 \$ 54 - ; 2 ((1 - & 2 2

ir.nasdaq.com

As you can see, current NASDAQ CEO Adena Friedman signed off on this transaction. SunGard was then sold to FIS. AFTER it had developed a very interesting product converting Russian Rubles to dollars in real time.

<https://www.finextra.com/pressarticle/49357/otkritie-capital-taps-sungard-for-automated-ruble-conversion>



Otkritie Capital taps SunGard for automated Ruble conversion

Otkritie Capital (Otkritie), one of the leading financial services providers in Russia, has selected SunGard to help launch a new direct market access (DMA) service allowing for automatic real ...

www.finextra.com

I'll say that again: FROM Russian rubles TO dollars in real time. Providing DMA to WHICH markets????

So, the marriage of Blackstone Alum Hutchins and Greifeld to form N Island and become a top investor in the criminal enterprise NITE was a natural fit. Money laundering on a MASSIVE scale. Algos and OTCM shells are very complimentary money laundering vehicles. Not to mention: Russian Mirror trades: RU ADR's trade OTCM Pinks as well. The KCG 1Q2014 astronomical increase in OTCM volumes. Expunged from SEC reviewed filings. Attached on previous emails as part of the OWB record. NASDAQ is also the repository of the vast AQR blank check money laundering shells. FULLY SEC reporting for credibility. As with many OTCM shells. The only real difference between a NASDAQ/AQR blank check shell and an OTCM shell is the amount of money being laundered. Clayton should have been investigated and barred from SEC business pending a full and thorough investigation. So, that precludes the corrupt SEC IG Hoecker from any involvement.

Cheers!

Christopher J Dilorio
Whistleblower
[REDACTED]

From: Chris Dilorio <[REDACTED]>
Sent: Thursday, September 17, 2020 5:56 PM
To: [REDACTED]
Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

Judge Nathan,

I applaud your reproof of the SDNY.

Now, I urge you to look at the Dan Kamensky case. I have never met Kamensky. When I saw the joint SEC/SDNY complaint I became physically ill. I am an SEC whistleblower. The SEC/SDNY have actively and continuously obstructed a thorough investigation of my extremely serious allegations. In favor of Rich Handler/Jefferies. The IB in the Kamensky case. Based on my experience with the SEC/SDNY I believe they both are withholding exculpatory evidence which impeaches the credibility of the SEC/SDNY/Handler/Jefferies. A corrupt relationship exists between the SEC/SDNY and Handler/Jefferies. In addition to others in my claims. I have contacted Judge Cave as well as Kamensky counsel. Disclosure of this corrupt relationship puts the Neiman Marcus "sting" in a whole different context. The motives of which should be investigated.

Respectfully,
Christopher J Dilorio
Whistleblower
[REDACTED]

From: Chris Dilorio <[REDACTED]>
Sent: Thursday, September 17, 2020 9:17 AM

[REDACTED]

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

Please see the new photos attached:

Mr Blostein's Eureka moment and Cifu admission that the NITE/VIRT revenue model is driven by the "retail participation" rate:

Cifu: "The retail segment of what we do is a SIGNIFICANT portion of our overall American equity segment..."

So, are institutions trading .0001 OTCM money laundering shells? Mr Blostein: what are you modeling for NITE/VIRT OTCM share volumes when you KNOW and Cifu admits the importance of these share volumes on

EFTA00039833

the NITE/VIRT revenue model? Does ANY Sell side analyst model this NITE/VIRT revenue driver? WHY doesn't Cifu disclose these share volumes in SEC filings? He used to. Knight/KCG used to as well. See photo. So why did he stop? Did NITE exit OTCM trading? ABSOLUTELY NOT. So the Goldman Analyst Blostein KNOWS these share volumes drive revenue at NITE. Blostein doesn't disclose these volumes in his model. Fraud is also an OMISSION of material fact. Time to ask Cifu WHY he doesn't tell you to model OTCM share volumes fellas. This is WHY the SEC/Handler/Jefferies/VIRT/KCG acquisition took place. As Cifu admits: Retail:OTCM drives NITE/VIRT earnings.

Cheers!

Christopher J Dilorio

Whistleblower

From: Chris Dilorio <[REDACTED]>

Sent: Wednesday, September 16, 2020 3:01 PM

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

First Sell Sider, SEC,DoJ who can get me a current NITE/VIRT tangible book value calculation wins a prize: Mr Kamensky's freedom. That's BEFORE proper classification of Naked short fails NITE/VIRT KNOWINGLY books as fraud assets: receivable.

Mr Blostein, I remember a NITE/VIRT earnings call not too long ago where you made a direct correlation between NITE OTCM share volumes and NITE trading profits. Remember the 1? I have hard copies of that too. Did Cifu threaten you if you bring it up again? Please forward your model including these share volumes so we can compare notes. Who else has been threatened with retaliation by Cifu/Handler? Who has been promised business? Mr Repetto/Fannon? Who has BUY ratings on NITE/VIRT currently?

Cheers!

Christopher J Dilorio

Whistleblower

From: Chris Dilorio <[REDACTED]>

Sent: Wednesday, September 16, 2020 9:20 AM

[REDACTED]

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

Judge Cave,

The criminal, corrupt relationship between the SEC/Handler/NITE goes further.

Doesn't it Mr Repetto?

For the Sell Siders on this e mail:

Please tell Judge Cave, The SEC/DoJ, Mr Kamensky's counsel the following:

- 1) how many red flags in NITE 3 CFO's in a year?
- 2) What you're modeling for NITE OTCM share volumes
- 3) WHY none of you question the once again ballooning balance sheet on earnings calls

The other questions below can be answered by Mr Repetto and Jefferies Mr Fannon

Cheers!

Christopher J Dilorio

Whistleblower

[REDACTED]

From: Chris Dilorio <[REDACTED]>

Sent: Monday, September 14, 2020 9:22 AM

To: [REDACTED]

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

I look forward to speaking with you

Regards,

Chris

From: Chris Dilorio <[REDACTED]>

Sent: Monday, September 14, 2020 6:02 AM

[REDACTED]

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

Judge Jones, Judge Cave

Straight forward, irrefutable proof of SEC corrupt relationship with Handler Jefferies:

KCG was engaged in abusive naked shorting in months leading up to the SEC/Handler/Jefferies VIRT acquisition closing 7/31/2017

SEC/Handler/Jefferies KNEW the core business at KCG is and always has been abusive naked shorting OTCM and other shells to facilitate money laundering.

SEC/Handler/Jefferies knew KCG was insolvent in 2012 as well as 2017 as a direct result of this illegal activity

Handler/Jefferies were the largest shareholder of KCG in 2017 when the SEC/Handler/Jefferies/Cifu orchestrated VIRT/KCG merger was consummated

<https://www.clearygottlieb.com/news-and-insights/news-listing/14-billion-merger-of-kcg-holdings-and-virtu-financial>

\$1.4 Billion Merger of KCG Holdings and Virtu Financial | Cleary Gottlieb

Cleary Gottlieb is representing Goldman, Sachs & Co., as financial advisor to KCG Holdings in its sale to Virtu Financial in an all-cash transaction valued at \$1.4 billion.

www.clearygottlieb.com

SEC/Handler/Jefferies/Cifu used known fraud "assets" on the KCG balance sheet to determine the grossly inflated tangible book value calculation used to value the KCG acquisition price.

Immediately prior to the transaction closing on 7/31/2017 the SEC/Cifu wrote down more than \$4 billion in leverage from the KCG balance sheet. INCLUDING fraud assets used to calculate the grossly inflated acquisition price of KCG.

SEC/Handler/Jefferies KNEW KCG was insolvent in 2012 AND July 2017

The SEC has known about the Knight/KCG/VIRT accounting fraud and securities fraud for years. I TOLD THEM.

The SEC has engaged in a massive criminal obstruction scheme that is ongoing to protect NITE/VIRT.

As a direct result of this corrupt, criminal scheme the investing public is put at risk, NITE/VIRT is insolvent again/always, Handler/Jefferies benefit, my rights as a whistleblower have been egregiously abused, Kamensky's life is ruined.

The SEC/SDNY is making a mockery of your respective courts. Worse: the SEC and SDNY are committing a massive and well known FRAUD on your respective courts.

The true character of Handler/ Jefferies as well as the corrupt relationship the SEC has with Handler/Jefferies must be disclosed to Mr Kamensky. Any verdict without these disclosures is a known miscarriage of justice.

<https://www.lexology.com/library/detail.aspx?g=9e2b4e49-5ee2-48f6-b8c7-03d39d02b5ca>



SEC ordered to produce Brady and Giglio materials due to joint investigation with U.S. Attorney's office - Lexology

A district court ordered the SEC to produce material solely in its possession to a defendant in a parallel criminal prosecution by the U.S. Attorney...

www.lexology.com

Mr Kamensky WILL have my information. Mr Kamensky WILL have justice. The SEC/Handler/Jefferies/Cifu corrupt criminal relationship and ongoing frauds on the public will be exposed and ENDED.

Regards,

Christopher J Dilorio

Whistleblower



From: Chris Dilorio <[REDACTED]>

Sent: Saturday, September 12, 2020 8:23 AM

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

Judges Cave and Jones,

The SEC corruption goes well beyond just Handler/Jefferies/NITE.

My research: I developed a template. I would search NITE top traded OTCM shells. From there: Derivatives. I have filed several separate but related TCR's based on that information.

The SEC has brought several actions related to my 2013 Knight TCR with Berger: Hanover/Magna, JMJ, Keener, Hicks, Fife, UBSS, and FINRA's NITE Nov 2016 Rule 204 complaint. ALL my information. In addition: FINRA brought a complaint against Brown Brothers Harriman AFTER the SEC was in possession of my information for almost a year. That complaint IS also my information. New SEC NY Richard Best brought that FINRA complaint. ALL of the entities are un named. WHY? Per the complaint: BBH delivered 80%+ of the trades to executing BD's/MM's. NITE as the #1 trader in the space would most certainly have executed BBH trades converting worthless certs to real money. The BBH complaint also cites un named Swiss Banks and FFI's. As a result of exposing these frauds the SEC/FINRA no longer allow searches of OTCM share volume by Market Maker. Further, Cifu, Handler, the SEC have allowed the post VIRT/KCG: NITE to no longer disclose these share volumes in any SEC filings NOR SEC reviewed investor presentations. Has NITE exited this business? ABSOLUTELY not. It is and always has been the DRIVER of NITE trading profits. Virtually riskless albeit illegal. The investing public is intentionally misled as to the true, core business of NITE.

The August 1 2012 "glitch" proved my allegations that Knight was insolvent. Knight had to raise virtually the entire "glitch" loss despite claiming to have a "highly liquid balance sheet". The accounting fraud is a result of the illegal naked shorting. The SEC, Handler, Jefferies et al "glitch" and bailout wasn't JUST a cover up of a massive SEC failure to protect the investing public however. The 2012 "glitch" was the first of many cover ups so that this massive fraud on the public can continue. Per previous correspondence and the extensive record with the SEC: As with the "glitch" ALL participants KNEW exactly the NITE core business and accounting fraud at NITE in 2017 had not changed. As the record clearly shows: NITE was engaged in abusive naked shorting OTCM (and other) money laundering shells immediately prior to the VIRT/KCG merger closing. Many of the same players in the 2017 "glitch" as the 2012 "glitch". JPM, GS, JEF/Handler, and Jay Clayton Sull Crom colleague Jared Fishman. How did the VIRT/KCG merger get approved in the face of the overwhelming evidence I provided? The same way the 2013 Knight/Getco reverse merger got approved: SEC criminal obstruction.

In 2017 the SEC, Cifu, Handler wrote down 4 billion+ Naked short fails immediately prior to the VIRT/KCG deal closing. These fraud "assets" were sitting on the KCG balance sheet and used to calculate the grossly inflated tangible book value used in the KCG acquisition price. KCG was grossly insolvent. ALL participants and the SEC knew this. The primary beneficiary of this fraud: Handler/Jefferies.

In 1Q2020 I alerted the SEC that absolutely nothing had changed. NITE reported a receivable of 2.5 BILLION+. This was up 90% sequentially. HUGE red flags. No investigation. In 2Q2020 the receivable had fallen by just \$100 mil from 1Q. Meaning: The 1Q receivable would have zeroed out within days of March 31 2020 as is required: settlement. Then, the receivable at June 30 was within 100 mil of the March 31 balance. Inconceivable. The March 31 receivable was NEVER zeroed out as is required by law. Further, the fails listed as "assets" are a fraud.

More accurately: liability. AND there is nothing in the receivable that can be converted into cash for company use. There are prior commitments: settlement. Combine this with the THIRD CFO in a year and you have the makings of ANOTHER "glitch"

As I've told the SEC: HFT holdings:seconds. No receivable there. DMM? KCG sold theirs in 2016. So that leaves the VIRT DMM. Even AFTER the massive 2Q2017 Cifu/Handler/SEC write down, the receivable is up more than 6X from the last VIRT stand alone 2Q2017. AGAIN the effects of the core NITE illegal activity.

So, what has changed since August 1 2012? Absolutely nothing. This is an ongoing, massive fraud perpetrated on the American people. Well orchestrated by the SEC,Handler/Jefferies,Sull Crom et al.

Did Clayton recuse himself from my Award denial? Did Clayton recuse himself from the VIRT/KCG approval? Did Clayton EVER disclose his Sull Crom NITE conflicts?

The answer can be found in the very carefully structured complaints against several entities in my 2013 and derivative TCR's: NONE of the activity in these SEC/FINRA complaints takes place without a willing, executing BD/MM converting worthless certs into real money. The #1 trader in the space: NITE. Yet, you won't find NITE in ANY of these complaints. As far as the SEC is concerned: "penny stock trading fairies". The corrupt, criminal SEC/Handler/Jefferies relationship explained.

I offer AGAIN to fly to SEC DC HQ or NY Office on my own dime to have the best and brightest at the SEC rip me apart and refute my extremely serious allegations 1 by 1. Bring the SDNY too. Better yet: RE forward my information to Handler,Cifu et al. I know they have already seen it from the SEC. I still have yet to be sued by ANYONE related to my information. The Opco Denial Award is also further evidence of SEC criminal obstruction. A gross mishandling of my information to both bring strategic complaints while protecting the criminal entity NITE. Ms Norberg has created some of the most extraordinary reasons for denying my award. The best so far: "SEC investigators never saw my information". An acknowledgement of SEC criminal Obstruction. It is the job of the OWB exclusively and explicitly to distribute whistleblower information within the SEC. A whistleblower has no way of knowing WHO at the SEC is working on a case. Further, despite my request for Norberg to produce the entirety of my extensive record with the SEC, she failed to do so.

What was the denial in Opco based on? The SEC, Clayton, Handler, Jefferies, NITE et al ongoing massive fraud on the public must continue. So it does.

Mr Kamensky must have my information.

This massive fraud on the public MUST end. ALL of it

Per the extensive record and my derivative TCR's: It isn't just NITE,Cifu,Handler,Jefferies et al the SEC is protecting. Is it Jane?

Regards,

Christopher J Dilorio

Whistleblower

From: Chris Dilorio <[REDACTED]>

Sent: Tuesday, July 7, 2020 6:09 AM

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

Janey,

MORE EXTRAORDINARY SEC corruption and criminal obstruction designed to protect criminals and screw whistleblowers like me. Despite my very generous 4 day offer to produce the entire record which is the basis of my award application/denial/appeal AND REQUIRED by the statute I have referenced:

240.21F-12 "Materials that may form the basis of an award determination and that may comprise the record on appeal", The several hundred e mails I have sent you, Hoecker et al MUST be part of this record. Janey, you failed to produce this record. As I made clear: my 6/23/2020 emails to you Hoecker, SEC commissioners were merely re re re sent previously sent e mails: the record. Further, my 6/23/2020 e mail: Formal appeal for preliminary denial covered action 2015-016 Knight Capital & Appendix was merely a summary of several hundred e mails sent to you, Hoecker et al. These e mails SHOULD be the record. You failed to produce the record. Which begs the question: WHAT "record" was used to determine the SEC preliminary denial exactly IF the SEC can't produce the record? The preliminary denial was completely fabricated and must be reversed. But, it doesn't end there: per my 6/23/2020 summary based on several hundred e mails sent to the SEC, the RECORD of EXTRAORDINARY corrupt obstruction designed to protect criminals and screw whistleblowers is not confined to Opco,NITE,UBSS,Sason,Keener etc etc etc. I have filed 2 TCR's with the OWB related to the money laundering/transaction

laundering/Putin/Rakishev/Trump/Kushner/Alfa/Crede/Peizer/Milken/Hapoalim/SBNY/CardWorks/ESQ/WireCard/AQR etc etc etc fraud known as Net Element. For YEARS the SEC has been in possession of not just my TCR's but HUNDREDS of e mails supporting my TCR's comprising the extensive record. Here again, the SEC is covering up a MASSIVE fraud perpetrated on the public and well within even the grossly corrupt SEC ability to shut down the fraud IF they had used my information to execute its mandate to do so. Instead, the SEC obstructed a thorough investigation. Per my previous e mails: the record: NETE claimed to be a payment processing entity. Claiming further to process BILLIONS of dollars worth of transactions every year. Its subsidiary Pay Online is linked to the massive fraud Wire Card. How's the SEC Wire Card investigation coming along? For years, based on my extensive financials research and other research, I pleaded and pleaded with the SEC to shut down this massive fraud. They did not. email after email. Year after year I wrote the SEC "NETE is a money laundering/transaction laundering fraud". Rather than shut it down, the SEC with the help of NASDAQ allowed fraud public offerings by Crede/Peizer/Milken related entities: Esousa and Cobblestone and a reverse split so NETE could keep its NASDAQ listing. The balance sheet has been grossly insolvent for years: goodwill. ALL of my allegations were confirmed when NETE decided to "unlock value in its payment processing" business by doing a reverse merger with a CA EV "manufacturer" started by a musician. This fraud transaction is quite common in money laundering shell land dominated by NITE/VIRT. The SEC cover up of criminal activity while screwing whistleblowers:ME: The "payment processing business" is to be "sold". Related of course was the SEC cover up of criminal activity while screwing whistleblowers: ME: The Goldman/Sull Cromm advised purchase by ALLY of CardWorks: Merrick Bank: NETE and then the recent unwinding of this fraud transaction. No doubt the brain child of Chair Clayton and his Sull Cromm colleague Jared Fishman who has played a key role in keeping the criminal entity NITE/VIRT up and running.

NETE/Mullen: "here glitchy glitchy" cover up. But, who the hell would EVER touch the massive fraud: NETE? Only another fraud: Mullen.

Mullen doesn't "manufacture" ANYTHING. Mullen is simply a car dealership.

The K50 EV is manufactured in China by Qiantu a subsidiary of CH-Auto. Qiantu/CH have a production facility in China. There will be no Mullen "production" of EV vehicles in Washington or anywhere else in the US.

But, the SEC facilitated fraud doesn't end at protecting criminals and screwing whistleblowers: ME. Per my TCR attached, there is a well orchestrated eco system of fraud. Including "issuer/bag man funded research" that facilitates P&D. In fact, on 11/8/2018 the SEC brought a complaint against an entity I cited in 1 of my emails to the SEC: the record: known as SeeThroughEquity

<https://www.sec.gov/litigation/complaints/2018/comp-pr2018-259.pdf>

Seethruequity, LLC, Ajay Tandon, and Amit Tandon

THE DEFENDANTS 6. SeeThruEquity, LLC is a Delaware limited liability company that was co-founded in 2011 by brothers Ajay Tandon and Amit Tandon.

www.sec.gov

SeeThroughEquity was engaged in a Pump and Dump promotion of NETE in April and August 2018

<https://www.netelement.com/press-releases/release-content/1062906#.XwRXEOWSnIV>



SeeThruEquity Issues Update on Net Element, Inc.

NEW YORK, NY / ACCESSWIRE / April 10, 2018 / SeeThruEquity, a leading independent equity research and corporate access firm focused on smallcap and microcap public companies, today announced that it has issued an update on Net Element, Inc. (). The note is available here: NETE April 2018 Update Note. Net Element, Inc. (NASDAQ: NETE, "Net Element") is a global financial

www.netelement.com

<https://www.netelement.com/press-releases/release-content/10734671#.XwRXGuWSnIV>



SeeThruEquity Issues Update on Net Element, Inc.

NEW YORK, NY / ACCESSWIRE / August 6, 2018 / SeeThruEquity, a leading independent equity research and corporate access firm focused on smallcap and microcap public companies, today announced that it has issued an update on Net Element, Inc. (). The note is available here: NETE August 2018 Update Note. Net Element, Inc. (Nasdaq CM: NETE, "Net Element") is a global financial

www.netelement.com

So, the SEC SeeThroughEquity complaint acknowledges the fraud associated with NETE. Well orchestrated. This P&D campaign was part of the 2 fraud offerings : Esousa and Cobblestone: I alerted the SEC to. Who PAID for the SeeThrough P&D? Crede/Peizer/Esousa/Cobblestone?

The cherry on top of the SEC corrupt obstruction: NETE was still in business in 2020 to receive taxpayer Cares Act money.

A summary of the record.

Janey, Hoecker et al,
Please update my Net Element and AQR TCR's
Cheers!
Christopher J Dilorio
Whistleblower
[REDACTED]

Not just irony but a massive fraud on the

From: Chris Dilorio <[REDACTED]>
Sent: Tuesday, June 30, 2020 1:01 PM

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

Janey,
the purpose of your 5 years in the waiting PRELIMINARY denial of my OpCo Award application could not be any more clear: run the clock out and protect NITE,UBSS,Magna et al while denying me rightful compensation. But, As I have repeatedly told you, Hoecker, your colleagues: the last overt act of this vast conspiracy has not yet occurred:

NITE/VIRT is insolvent today 6/30/2020 as a direct result of the SEC facilitated fraud on the public which is and always has been the core business at NITE/VIRT: Abusive naked shorting publicly traded shells to facilitate money laundering. The public is STILL at risk. The SEC has facilitated NITE intentionally misleading the public as to the true nature of its business. The SEC still facilitates this massive fraud on the public while it intentionally misleads the public there is no naked shorting because the SEC authorized the DTCC to create the illegal, shadow clear mechanism Obligation Warehouse (OW) so NITE's criminal activity can continue and it can circumvent close out REQUIREMENTS of Rule 204 of Reg SHO. ALL very much ongoing in June 2020 as a direct result of the SEC (OWB/Hoecker/Enforcement etc etc) criminal obstruction and ACTIVE facilitation of the criminal enterprise known as Knight/KCG/VIRT: NITE.

Clayton never disclosed his Sull Crom/Fishman/NITE conflicts. He must step down from the SEC IMMEDIATELY until a criminal investigation can be concluded. NITE must be halted IMMEDIATELY as it still poses a monumental risk to the investing public. FINRA should go back to being a cheerleader as it is just another enabler of this criminal activity. It has NO business enforcing SECURITIES LAWS. It should not be overseeing the OTCM. FINRA fines are a joke and not meant to be a deterrent. INTENTIONALLY siding with criminals over the investing public the SEC is mandated to protect. The cesspool known as the OTCM MUST be shut down. It exists

SOLEY for the purpose of facilitating a massive fraud on the public. The OW must be shut down IMMEDIATELY so the public can see just how pervasive naked short selling: MANIPULATION really is. EVERYONE at the SEC who has had contact with my information MUST resign/be terminated IMMEDIATELY. ALL of the AQR blank check shells must be shut down IMMEDIATELY as they pose a serious national security risk. AQR MUST be shut down IMMEDIATELY.

Certainly not exhaustive BUT a good start

Cheers!

Christopher J Dilorio

Whistleblower
[REDACTED]

From: Chris Dilorio <[REDACTED]>

Sent: Tuesday, June 30, 2020 7:36 AM

[REDACTED]

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

Janey,

please add the following info to my appeal of your preliminary denial of my Opco award.

More evidence the SEC is using/has used my information to both bring complaints and protect/obstruct complaints. Again, you, McKessy, Hoecker have been in possession of my 2013 TCR filed with Berger for several years. In addition to hundreds of e mails continuing into 2020 showing irrefutable and overwhelming evidence to support my allegations.

Highlighted in my attached TCR and related to my Opco Award application: Joshie Sason/Hanover/Magna: CGFIA, IMDS, NewLead, FreeSeas, PRTH etc etc etc. The SEC Sason/NewLead complaint is also my information as I filed separate but related NewLead, and FreeSeas TCR's with your office. The SEC complaint: Sason assignments: bogus notes. NO SHIT? Really? detailed by me. In addition to Bag Man Sason/Hanover/Magna, I detailed the illegal activity of Bag Man Justin Keener/JMJ in my 2013 TCR. Keener was the customer in the FINRA World Trade Financial complaint.

<https://www.finra.org/media-center/news-releases/2013/finra-fines-three-firms-900000-inadequate-anti-money-laundering>

FINRA Fines Three Firms \$900,000 for Inadequate Anti-Money Laundering Programs | FINRA.org

WASHINGTON - The Financial Industry Regulatory Authority (FINRA) announced today that it has fined three firms a total of \$900,000 for failing to establish and implement adequate anti-money laundering (AML) programs and other supervisory systems to detect suspicious transactions.

www.finra.org

Related to the billions of OTCM money laundering shells traded through World Trade, the BD SRO FINRA requested information from Keener related to his assignments and acquisition of bogus convertible notes including bank statements to prove the notes weren't bogus. Keener told FINRA to 'F Off'

https://www.finra.org/sites/default/files/OHODecision/p182993_0_0.pdf

FINANCIAL INDUSTRY REGULATORY AUTHORITY OFFICE OF HEARING OFFICERS

5 distributions of securities in violation of Section 5 of the Securities Act of 1933. Tr. 158, 179-180.6 On September 22, 2011, FINRA staff served a request on Keener, pursuant to FINRA

www.finra.org

FINRA barred Keener/JMJ in 2013 as a "Bad Actor"

The SEC was certainly aware of the FINRA action

<https://www.sec.gov/litigation/opinions/2012/34-68014.pdf>

As recently as 2019 Bag Man Keener/JMJ was involved in ANOTHER money laundering shell called Blink Charging fka New Image Concepts

<https://www.sec.gov/cgi-bin/browse-edgar?action=getcompany&CIK=0001429764&owner=exclude&count=40&hidefilings=0>

<https://www.sec.gov/Archives/edgar/data/1429764/000114420419004046/0001144204-19-004046-index.htm>

EDGAR Filing Documents for 0001144204-19-004046

Blink Charging Co. (Subject) CIK: 0001429764 (see all company filings) IRS No.: 030608147 | State of Incorp.: NV | Fiscal Year End: 1231 Type: SC 13G/A | Act: 34 ...

www.sec.gov

New Image Concepts was detailed by the SEC in their Jaclin et al "Shell factory" complaint in 2016. PRIOR to Keener involvement.

<https://www.sec.gov/litigation/complaints/2016/comp-pr2016-86.pdf>

Case No. 2:16-cv-03250

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 Case 2:16-cv-03250 Document
1 Filed 05/12/16 Page 1 of 45 Page ID #:1 AMY JANE LONGO, Cal ...

www.sec.gov

But Keener not the only 1 involved who knew New Concept was a money laundering shell.
CEO of Blink is Michael Farkas. SEC knows him well from his Skyway Communications days.
The SEC revoked the registration of Farkas/Skyway in 2007

[https://www.sec.gov/cgi-bin/browse-edgar?
action=getcompany&CIK=0001128723&owner=exclude&count=40&hidefilings=0](https://www.sec.gov/cgi-bin/browse-edgar?action=getcompany&CIK=0001128723&owner=exclude&count=40&hidefilings=0)

The CFO of Blink is Jonathan New. Formerly CFO of the AQR/Crede: Milken money laundering/Transaction
laundering blank check shell: Cazador/Arco: Net Element

A director of Blink is a guy named Donald Engel who worked at Drexel with Milken.
New Concepts was HQ'd in Santa Monica: Milken

But it gets better

the Jaclin shell factory also linked to Honig, Stetson, Alpha Cap, Frost as well

<http://www.teribuhl.com/2019/08/06/honigs-shell-factory-attorney-gregg-jaclyn-barred-as-sec-lawyer/>



Honig's Shell Factory Attorney Gregg Jaclyn Barred as SEC lawyer - TERI BUHL

Your Voice. High Times Admits SEC Filing is Wrong: Stormy Simon
off the Board - L.A. Cannabis News on Text messages show
Cannabis investors Defrancesco & Serruya allegedly Colluded
with Clarus Securities' Christodoulis in Multiple Stocks; High
Times Admits SEC Filing is Wrong: Stormy Simon off the Board -

www.teribuhl.com

Where the SEC said multi billionaire Frost risked ALL to make a few million. NO, Frost, Alpha (also in my attached
TCR), Stetson, Honig were LAUNDERING. Frost bought Ladenburg from Milken flunkie Icahn AFTER Icahn rolled
Gruntal int Ladenburg. Gruntal: Icahn, Sater, SAC, Feinberg et al: Milken

The SEC intentionally omitted a Honig/Stetson shell from this complaint:

Millenium Bio/Inergetics

linked to Trump Cleveland fundraiser and healthcare fraud felon: Brian Collieran

In typical SEC "cover up", revoked the Millenium/Inergetics registration in 2019.

[https://www.sec.gov/cgi-bin/browse-edgar?
action=getcompany&CIK=0000072170&owner=exclude&count=40&hidefilings=0](https://www.sec.gov/cgi-bin/browse-edgar?action=getcompany&CIK=0000072170&owner=exclude&count=40&hidefilings=0)

Finally,

SEVEN F'n Years AFTER FINRA barred (not exactly) Keener/JMJ and my Berger TCR filed with your office Janey,

The SEC is going after Keener/JMJ related to my information AGAIN

17.5 BILLION shares of money laundering penny stocks.

Justin W. Keener d/b/a JMJ Financial (Release No. LR-24779; Mar. 24, 2020)

SEC Charges Unregistered Penny Stock Dealer Litigation Release No. 24779 / March 24, 2020 Securities and Exchange Commission v. Justin W. Keener d/b/a JMJ Financial, No. 20-cv-21254 (S.D. Fla. March 24, 2020)

www.sec.gov

WHO was/were executing BD's/MM's in these billions of shares of worthless Keener/JMJ money laundering shells????

What are odds that bogus note/worthless certs/assignments Sason/Magna would be involved with bogus notes/worthless certs/assignments Keener/JMJ in money laundering shells like IMDS and CGFIA etc) AND CGFIA was detailed by me to the SEC/FINRA AND CGFIA was 1 of the shells in the FINRA Opco AML complaint AND where NITE and UBSS traded billions of shares of CGFIA AND where NITE and UBSS traded billions of shares of IMDS also Now, what are the odds of all of that?

All you have to do is read my attached TCR Janey.

Cheers!

Christopher J Dilorio

Whistleblower

From: Chris Dilorio <[REDACTED]>

Sent: Tuesday, June 23, 2020 4:11 PM

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

small typos/corrections:

Mirror trade activity peaked in 1H2014 not 2H2014 and this coincides with OTCM astronomical share volume data in 1Q2014 and 2Q2014 that were expunged from KCG 10Q SEC filings. Not 2Q2014 and 3Q2014 SEC reviewed 10Q's as I previously stated corrected below
Chris

From: Chris Dilorio <[REDACTED]>

Sent: Tuesday, June 23, 2020 9:48 AM

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

Ms Norberg,

I am in receipt of the SEC OWB correspondence allowing me more time to respond to the preliminary denial of my award application for the Oppenheimer 2015 covered action. This e mail was the last 1 I sent to your office related to my appeal. It will serve as the basis of my appeal. Including the attachments of my 2013 TCR submitted with Berger Montague to the SEC. I will also forward correspondence from 2012 and following detailing my extensive correspondence with Robin Traxler at FINRA as well as Sean McKessy in the OWB. Even though, I have previously forwarded your office as well as the SEC IG office the exact same corroborating evidence. My response to you will be lengthy and detailed. However, given that it took your office FIVE YEARS to send me a preliminary denial notice, that is understandable and in fact a result of YOUR lengthy delay in notifying me. ALL of my response pertains to the denial appeal at hand.

In 2011, I filed my first Whistleblower complaint with the SEC. Detailing a massive fraud on the public directly implicating dozens of entities. The center of my claims: Knight/KCG/VIRT: collectively NITE and the Swiss banking giant UBS:UBSS. By far, NITE was and still is today the largest MM/executing BD in the OTCM space. I was shocked to find the Swiss banking Giant UBSS was trading many of the same stocks as NITE and to the extent they were. This came on the heels of the FINRA UBSS Reg SHO complaint where the extent of the UBSS activity "threatened to undermine the integrity of our markets" while the SEC analysis of this activity was simply a case of "sloppy record keeping". My experience as an Institutional Sales trader: executing multi million share equity trades for the largest institutions in the world like Fidelity and Putnam. In addition, as a Research Sales person: analyzing financial statements and making investment recommendations formed the basis of my expertise. In fact, the SEC OWB has paid out awards for information just like mine. In August of 2011, I informed the SEC that NITE was insolvent having reported just \$105 mil in working capital at June 30, 2011. AND, for the reasons cited in my TCR detailing massive accounting fraud as a direct result of illegal naked shorting/self clearing/reverse splits/cusip changes etc. The SEC had a choice: investigate these extremely serious allegations and shut down this massive fraud on the public OR cover up their failure and allow this massive fraud on the public to continue. Unfortunately for the American public the SEC is mandated to protect, the SEC chose the latter. As a direct result, ALL of the activity detailed by me in this TCR and other TCR's filed with the SEC as well as 9 years of additional correspondence with the SEC, this is very much an ongoing, massive scheme. One that the SEC actively facilitates. Countless losses have been incurred as a result. NITE as I detailed is in a constant state of insolvency. The SEC has time and again intentionally misled the investing public that there is no abusive naked shorting. NITE is still in business TODAY.

The core business at NITE is and always has been: abusive naked shorting OTCM shells to facilitate money laundering. Not DMM, FCM, reverse mortgages, or even HFT. This illegal business is EXTREMELY profitable and

virtually riskless. AND, both the SEC and FINRA know this. In 2016, FINRA brought a Rule 204 complaint against NITE. The fine was pathetic and not meant to be a deterrent. This is WHY the OTCM exists. But it's not JUST OTCM as my AQR TCR filed with the SEC clearly proves: NASDAQ Blank check shells as well. I have also filed separate TCR's related to NewLead and FreeSeas: 2 massive money laundering shells which began on NASDAQ, de listed to the OTCM. NONE of the activity detailed in the Opco/Gibraltar complaint takes place without a willing executing BD/MM who ultimately turns worthless certs into real money. That #1 trader is NITE. As you read in my Knight TCR CGFIA is at the heart and, because it was based in Colorado, became a template of sorts for my extensive research. See Ms Norberg, unlike the SEC "investigators" on the Opco/Gibraltar complaint, I've actually seen first hand the CGFIA "world HQ" as well as the rented Littleton home of CGFIA CEO Guyer. I've done extensive research on Properties claimed to be owned and M&A transactions done for the sole purpose of cert printing and distribution (Aurelio AMNP) where the ultimate acquisition amounted to a distributor of Ukrainian folk music. I've also done extensive research on domestic and foreign financial institutions claiming to "invest" in these scam companies like Josh Sason/Hanover/Magna also cited in my 2013 Berger/Knight TCR linked. So, as I detailed to Ms Traxler, I followed Guyer to Neuchatel Switzerland and his previous endeavor: Antelope Technologies also with an office in Highlands Ranch CO. Where I discovered a connection to Swiss/German individuals/entities that were also related to another OTCM shell in the OpCo/Gibraltar complaint as well as my Knight TCR: AppTech. Offices in the Woodlands TX and Boca Raton. AND very much up and running today. SHOCKING. The SEC OpCo/Gibraltar complaint is based on the FINRA complaint. That is absolutely irrefutable. As the Gibraltar complaint alleges just 1 OTCM shell and just a million shares while Commissioners Stein and Aguilar referenced BILLIONS of shares in their OpCo waiver dissent. Who executed those BILLIONS of shares? Was OpCo even a MM? If I ask a question it's typically a rhetorical: I know the answer. The SEC knows the answer also. The SEC OpCo complaint does not mention the executing BD/MM. The SEC complaint doesn't mention Sason/Hanover/Magna either. The SEC complaint makes no mention of illegal naked shorting which is clearly evident in the CGFIA 10Q referenced below. THIS IS MY INFORMATION. So, why aren't NITE, Hanover/Magna and UBSS implicated in the SEC OpCo/Gibraltar complaint? What my TCR clearly and irrefutably proves: NITE was engaged in illegal activity both BEFORE and AFTER the SEC et al orchestrated August 1 2012 "trading glitch". So, the SEC bailed out a KNOWN criminal entity. Unfortunately for the investing public, the SEC has doubled down on facilitating this illegal activity into 2020. The "glitch". Knight was insolvent in August 2011. I told the SEC this. The "glitch" proved my allegations. Key point in my TCR: NITE inadvertently sent 4000 worthless securities to JPM to secure an emergency bridge financing as collateral. These were open, naked short fails that could not be covered/closed due to a cusip change (SEC/FINRA approved rev split) booked as an "asset"(receivable) due to self clearing: MASSIVE accounting fraud. Ironically, the "glitch" proved my allegations: despite claiming to have a "highly liquid balance sheet" NITE had to raise the entire amount of the "glitch". AND the ultimate "financing" was not collateral based. Rather a 50% discounted convert when the stock had already been crushed to \$3 OR \$1.50. ALL of the financing participants knew the NITE balance sheet was complete fraud. NITE also committed securities fraud in pledging those 4000 worthless securities as collateral to JPM: SCOTUS Rubin: pledging collateral to secure financing is an offer to sell. JPM looked the other way. As did the SEC. Further, I submitted my amended TCR with Berger in March 2013, In August of 2013, FINRA brought a penny stock AML complaint against OpCo. Sale of unregistered penny stocks. WHO ultimately executed the trades? 2008-2010. In July 2013, the "glitch" financing Gen Atlantic/Getco reverse merger with Knight to form KCG closed. The new CEO of KCG was Dan Coleman who ran Equities at UBSS during their Reg Sho and cross border activity. For UBSS, the DOJ (Acosta Downing et al) dropped their DPA in 2010. My claims: the FINRA OpCo/Gibraltar complaint clearly implicates UBSS criminal activity AFTER the DoJ dropped its UBSS x border DPA. This is what the SEC is protecting in the OpCo/Gibraltar complaint: NITE/UBSS/Hanover/Magna illegal activity. Also in my Knight/Berger 2013 TCR: IMDS. A multi year money laundering shell kept up and running by the SEC. Also NITE,UBSS, and Hanover Magna. In addition to other entities like JMJ, Southridge, and Alpha Capital Anstalt. Alpha Capital Anstalt is very much in business today as a result of SEC obstruction while the SEC

recently brought a complaint against JMJ for activity like that in IMDS even AFTER he was barred by FINRA. In IMDS, the SEC allowed 2 barred individuals (CEO/CFO) to do an offering that created 37 BILLION shares of IMDS at .0001 with Chinese Nationals before revoking the IMDS registration. What do you do with 37 billion shares of IMDS at .0001 when there are no bids below that? NOTHING. The stock never traded. The SEC orchestrated a NITE/UBSS/Hanover/Magna/JMJ/Alpha etc MASSIVE naked shorting to facilitate money laundering scheme bailout so that the MASSIVE naked short position didn't need to be covered in the open market as is mandated by Rule 204. Thus insuring profits and not MASSIVE losses for NITE and UBSS.

I also filed separate TCR's for NewLead and FreeSeas. 2 "Greek shipping" money laundering shells started on NASDAQ and delisted to OTCM. NITE top trader in BOTH. Hanover/Magna in both. I contacted the KY Div of Mines and notified the SEC that these "transactions" were complete fraud. The SEC Feb 2019 complaint against Hanover/Magna is my information: Bogus obligations, assigned, converted to worthless certs. Then dumped on the public and converted to REAL money by the executing BD/MM:NITE. Who generates illegal trading profits by abusive naked shorting. Very symbiotic relationship. 1 of the Hanover/Magna entities was Gibraltar/Hanover. Somehow omitted from the SEC OpCo/Gibraltar complaint. In NewLead, then SEC White and Ceresney firm Debevoise did a "fairness opinion" of a Russian Nickel wire transaction where the NewLead CEO had back dated documents. That has been expunged from SEC reviewed filings. FreeSeas: a structured tax evasion/money laundering shell. Also involved Credit Suisse and Deutsche Bank. Both Debevoise clients. Both involved in the tens of billions Russian Mirror trade scheme. In addition to Hanover/Magna a Milken related entity Crede: Run by Milken/Drexel/Obstruction of justice/Parking: Terren Peizer and his felon partner Michael Wachs. This led me to Net Element NETE. Peizer again. This time with more AML red flags than be counted. Well known to the SEC through TWO of my separate TCR's. CEO is Oleg Firer. Firer former money laundering shell Acies shut down by the SEC while NETE was left up and running. Acies very much up and running also in MA. In NETE: NASDAQ. AQR Blank check shell. SEC allowed 2 offerings so that NETE could keep its NASDAQ listing. 1 was with entity Esousa: felon Wachs ex wife. 2nd was with Cobblestone: felon Wachs sister. I told the SEC. They still approved the offerings. I discovered AQR money laundering blank check shell activity doing research on NITE and Hanover/Magna. A top traded NITE OTCM shell was Cereplast. Another AQR blank check shell. Hanover/Magna/NITE/ and Alpha Capital Anstalt. Alpha is Liechtenstein based and controlled by Martin Schlaff: Austria/Israel. Also IMDS (w/Schlaff controlled Balmore) and the Frost/Honing/Stetson et al complaint. Schlaff also LH Financial/Wolfson/Sulphco and Bawag: Sedona/Scan Graphics: Refco: Naked shorting. NITE is Refco on steroids. Cereplast ended in bankruptcy.

NETE claims to be a "payment processor". BILLIONS in transactions processed. Never break even let alone profitable. Balance sheet complete fraud. AML red Flags: Firer is Grenada Amb to Russia living in Miami, Apockinas/Grinshpun/Antonov/Rakishev/Trump/Kushner/SBNY/CardWorks/Merrick Bank/ESQ/Cohen etc etc etc money laundering/transaction laundering BILLIONS shell. Kept up and running for years since filing my NETE/AQR SEC TCR's. ALL of my allegations proved accurate in 2020 when NETE received Cares Act taxpayer money then announcing it was "unlocking the value in its misunderstood payment processing business" by doing a reverse merger with a CA electric car company started by a former musician. The payment processing business to be "sold" and the new company (Mullen) will own 80-90%. All made possible by SEC obstruction and ACTIVELY facilitating illegal activity. Another AQR blank check shell is Astra/Phunware. More Greek shippers related to massive swindler Economou originally intended to do an "energy logistics company" acquisition and somehow settled on "mobile app developer" Austin TX: Phunware. PHUN CEO is well known to the SEC with shells going back 15 years. I alerted the DoJ and SEC that PHUN was a money laundering shell. In addition to the "genius quant" AQR, AIPAC: Gerber/Hudson Bay, Nordlicht: Ari Glass/Boothbay, 1MDB: Khazanah Nasional, Global Crown/Rani Jarkas/EFG/BSI/Optima/Max Fang. AG Barr 1MDB waivers: Kirkland also AQR. Broidy: Trump: 1MDB money laundering. PHUN also received Cares Act money. AND PHUN is Trump/Kushner/Parscale campaign mobile App. PHUN should have also been shut down long ago. AQR too. OTHER AQR blank check shells: CIS/Delta/Urban Tea, Ability/Cambridge, Hunter Maritime, and MI Acquisition/Priority Tech Holdings. Ability/Cambridge: Israeli cellular intercept/surveillance. Israel sent employees to jail. In the US it was "securities fraud". The SEC Ability/Cambridge complaint was handled by Ansu Banerjee in the SECLA office.

Milken/Mogilevich/BoNY money laundering entity Sinex: Debasish Banerjee. WHY did SECLA have jurisdiction over ABILF/Cambridge? Result: ABILF is very much up and running today. I believe this is the PHUN/Trump/Kushner/Parscale mobile app technology.

Hunter Maritime:HUNTF: Never consummated an acquisition. Just cert printing/dumping. Also involved: Milken family office: Silver Rock. MI/Priority:PRTH. CEO Tom Priore: well known fraudster to the SEC. Also transaction/money laundering like NETE. Also involved: Hanover/Magna.

ALL AQR money laundering shells up and running today thanks to the SEC. Only recently did the SEC revoke CGFIA and NewLead. well after going dark and the massive fraud on the public had already been perpetrated. In NewLead, FreeSeas, etc etc etc a common tool used is reverse splits to perpetuate and facilitate illegal activity. SEC/FINRA approved. The result is the massive accounting fraud at NITE. WHEN not IF there is an open naked short fail when a rev split takes place, a new CUSIP/security is issued. Trades in the old cusip/security cease. This creates a structural liability. The fail/short can NOT be closed. Like covering a short in AAPL with MSFT. Because NITE is self clearing it books a prop naked short as a receivable. An asset. But, because NITE won't or CAN'T deliver, massive accounting fraud. Literally a liability booked as an asset. This is how "glitches" are born. But the SEC facilitated fraud doesn't end there. The definition of a failed trade: 1 that hasn't settled. The SEC/DTCC issue new securities where trades in the old haven't settled yet AND not authorized by the issuer. Settlement: buyer brings cash/seller brings securities. The DTCC simply makes journal entries. But there are still "IOU's" in the system. The SEC authorized the DTCC to create a shadow clear,non guaranteed, ILLEGAL (clearly contrary to 34' Act "prompt and accurate settlement) Obligation Warehouse so criminals like NITE et al can circumvent close out REQUIREMENTS of Rule 204. The OW is just what it sounds like. Per my Knight TCR, DTCC suspends services (Chill/Lock) and trades are deemed "ex clearing". In a FOIA request made with POGO,Berger and I asked the SEC fails data on dozens of NITE/UBSS top traded stocks like CGFIA,APCX and IMDS. The SEC response: see our website. The SEC fails data is for DTCC cleared trades only. The SEC knows exactly the level of fails sitting in the OW. They don't disclose. Intentionally misleading the public there is no naked shorting. In 1Q2020, the receivable at NITE/VIRT increased \$1.2 BILLION sequentially. Up almost 90%. AND the tangible book value is grossly insolvent. When it comes down to it, there really isn't ANYTHING in the receivable that NITE can convert into cash for its own use. There are prior commitments on those "assets": SETTLEMENT of transactions. Because the SEC has never shut down this activity, NITE is in a constant state of insolvency.

Other examples of SEC attempts to cover up NITE illegal activity so that it can continue include:

Cerberus/Feinberg/VIRT bidding on NITE post "glitch". Wasn't their turn. First, Gen Atlantic needed to monetize its GETCO "investment". The HFT business at GETCO was in a death spiral when the rev merger took place. So what was the attraction to NITE? The business that had absolutely ZERO overlap/synergies: OTCM. As low tech as it gets. Literally a trader sitting in a chair. As I have asked the SEC on hundreds of occasions over the years: what would happen to NITE trading profits if their OTCM share volumes went to ZERO? Cerberus is Feinberg: Gruntal/Milken. Also bailed out Bawag:Refco, HSH, and Deutsche Bank (\$50 bil Bad Bank to Goldman). Another Milken/NITE connection is Rich Handler: Jefferies. Also a Milken/Drexel protege. Milken was Gruntal: Feinberg,SAC,Icahn, Sater etc. Gruntal was "sold" to Ladenburg. Controlled by Vector/NewValley:Icahn/Lorber/Elliman etc. And, was sold to multi billionaire Frost. Who, according to the SEC risked it all trying to "make" a few million when he, Honig, Stetson, Alpha et al were really LAUNDERING. Milken also Whiterock ,D H Blair (Morty Davis) and AR Baron (Bressman/D H Blair) which was the precursor to Bear Stearns collapse . So, Milken and his merry crew of flunkies are really at the nexus of JUNK. They own Trump and his White House (Trump casino junk) and they own the SEC. It was Milken, Leon Black, Handler, Moelis, Virtue: Drexel that caused the S&L taxpayer bailout stuffing them with junk like Trump's. It is no coincidence that these same flunkies are also the largest CLO originators/managers. CLO's: Junk on steroids. AGAIN Bailed out by taxpayers in Cares Act HY. There also connections to Epstein. Treasury Sec Mnuchin and Black: HY/Junk/S&L's and Epstein. Black: Money laundering shell ESWW kept up and running by the SEC was/is an Epstein money laundering vehicle: JUNK IS JUNK.

THIS EXPLAINS the Handler/Jefferies/Milken repeated bailouts of NITE. It also explains the SEC criminal obstruction.

SEC Chair Clayton is also directly linked to this criminal obstruction. His firm Sullivan Cromwell and Jared Fishman are ACTIVELY facilitating this massive fraud on the public. Clayton did not disclose these conflicts in his disclosures. Sull Crom/Fishman have advised Knight/KCG/VIRT and several transactions designed to facilitate this ongoing and ongoing fraud on the public. Many of the same players involved in the "glitch" were involved in the VIRT acquisition of KCG in July 2017. In addition to Sull Crom/Fishman and Handler/Jefferies: JPM and Goldman. The SEC facilitated fraud in the NITE/VIRT transaction is egregious illegal activity. The transaction NEVER should have happened. KCG was an SEC reporting company until the deal closed on July 31 2017. Despite this FACT, VIRT CEO Cifu refused to "publish" KCG 2Q2017 financials. I estimate Cifu/Coleman/Handler/GS/JPM wrote down more than \$4 billion in open naked short fails: "leverage". The SEC let him. Meaning: "assets" used to determine the take out/ tangible book of KCG was complete fraud. VIRT grossly OVER paid for insolvent KCG.

Prior to the NITE/VIRT transaction closing in July 2017, NITE would report its trading stats monthly. Including OTCM share volumes. Cifu stopped this post merger. The SEC let him. In fact, you will find NO reference to NITE/VIRT OTCM share volumes in any SEC reviewed filing, sell side research or investor presentation. A well orchestrated fraud on the public. Omissions to Intentionally mislead the public as to the true representation of the NITE/VIRT business model. These share volumes are also at the center of my 2013 Berger TCR. There are no affirmative disclosures in any SEC filings to this day as to the AML risks posed in trading these OTCM and other shells. In a 2014 letter to the SEC, I detailed the first 2 months of NITE OTCM share volumes. When the 1Q2014 10Q was filed, these volumes were confirmed: An ASTRONOMICAL increase sequentially as well as year over year. These share volumes/my letter/TCR SHOULD have triggered an immediate SEC investigation. It did not. This portion of the KCG 1Q2014 10Q was expunged as well as 2Q2014 OTCM share volumes. I have detailed this to the SEC/OWB/Enforcement/IG. In the months leading up to the NITE/VIRT closing in July 2017, KCG put out monthly trade stat pr's showing KCG trading more volume than the overall market. Also indicative of naked shorting. Those pr's were also expunged. I also including electronic forms to the SEC OWB/Enforcement/IG. The SEC has essentially outsourced the ENTIRE OTCM market to the Broker Dealer SRO FINRA. Including: management of the OTCM share volume website fka OtcBB.com. Today, there is very little transparency into trading activity by MM as a result. Also: ISSUER corporate actions: rev splits, Short interest reporting: an absolute farce given there is still no CAT. AND BD compliance with the BSA. Per my TCR: WHY did NITE and UBSS trade Billions of shares of CGFIA and IMDS AFTER a Chill or Lock was placed (ex clear/OW)? CLEAR AML red flags. Because they had an open naked short position. Why not pull a market? Because they had an open naked short position. SAR's? WHEN? BEFORE OR AFTER THEY TRADED BILLIONS OF SHARES? There were no SAR's either. NITE can not outsource its compliance responsibilities to 3rd parties (like OpCo) when executing trades as MM. In 2015 at a SIFMA conference, Ceresney was "shocked" by the number of BD's under his supervision filing 1 or ZERO SAR's. NITE SHOULD have been investigated for egregious BSA violations long ago based on my TCR. Knight/KCG/VIRT:NITE is and always has been a criminal enterprise. Spitzer Russian/US mob bust: "worthless paper". Ashton Tech became VIE became Optimark became Knight/Trimark NITE literally "made by the mob". The SEC has known this for years. ALL of the "worthless paper" shells were SEC reporting companies. Today, Trump PA Campaign Mgr David Urban sits on the NITE BoD. AND is also on the BoD of his very own money laundering shell: Canadian/Pakastani/pot/COVID: FSD Parma: HUGE. Trump advisers/campaign staff Bannon and Parscale also involved in OTCM money laundering shells.Parscale Cloudcommerce fka Roaming Messenger also receiving taxpayer Cares Act money.

Madoff: more money laundering than Ponzi. HOW THE HELL did the SEC let that scam go on for as long as it did? Criminal obstruction. The former SEC IG Kotz actually investigated his "bosses" at the SEC unlike current IG Hoecker. Years of SEC obstruction. Bullshit "investigations" into "running ahead" meant to distract. Similar to the SEC "glitch" "market access complaint" where former SEC "glitch" Enforcement Dir Khuzami/Kirkland(Barr) also rep'd NITE. Can't make this up. The center of IG Kotz scathing failure of the SEC in Madoff: SEC NY and Mr John McCarthy who ended up being Knight/KCG Chief Counsel. As I said: can't make this up. And, as we know Madoff started his career in NASDAQ penny stocks exactly like the 1's in the Spitzer/Mob complaint.

OTCM: This is WHY the OTCM exists: abusive naked shorting publicly traded shells to facilitate money laundering. CEO Cromwell Coulson CHAIRED the FINRA market Regulation Cmte. Say it with me: Can't make this shit up: CMTSU. A founding OTCM Board member is former NITE trader Andrew Wimpfheimer:CMTSU. This is a very well orchestrated and ongoing fraud on the public. Russian mirror trades: no SEC OR DOJ investigation HOW? According to stories: activity peaked in 1H2014. Coinciding with NITE astronomical OTCM 1Q2014 share volume increase. In addition to money laundering penny stock shells, the OTCM is also home to many ADR's. Including Russian ADR's cited in the NYDFS/DBTCA/mirror trade complaint. Little/no disclosures. Also in my TCR: P&D is just a tool used to facilitate the fraud and NOT a stand alone fraud. The SEC intentionally stops short of thorough investigations into much bigger frauds. The same way it has the public believe the "penny stock trading fairies" convert worthless certs to real money. NO! willing executing BD's and MM's like NITE do that. Less than a year after filing my Knight TCR with Berger, FINRA (not the SEC) brought the BBH AML complaint. This was my information. Swiss banks, foreign/domestic institutions, executing BD's/MM's/ penny stock shells: \$850 mil in proceeds. Did BBH implicate NITE and other entities in my claims? WHY are all of the entities in the complaint UN NAMED? In the interest of transparency for the investing public? In 2019, I also filed an award application for the UBS x border/AML complaint. This is BLATANTLY my information. SEC/FINRA/ AND the SEC. I filed an IRS TCR based on my SEC TCR attached. In April 2016, 2 IRS CI Agents: VIKAS Arora and Nathan Sarnacki flew to Denver from Chicago to meet with me. I believe they were blown away. Then came the UBS complaint. As a follow up to our meeting, they wanted to know WHO at the SEC I shared my information with. I told them. That was the last I heard from them although I continued to send them my information.

To the SEC IG Carl Hoecker: In 2015 I parted ways with Berger as I was convinced the SEC was using my information in an unethical/illegal manner to both bring and obstruct complaints. Berger was not willing to file an IG complaint. After parting ways, I almost immediately did just that. Prior to retaining Berger I had filed an award application for the UBS Reg Sho complaint. In my submission and my correspondence with McKessy/OWB I made the claim based on OWB permissible rules to "open a new line of inquiry". One that would link the trading activity detailed in my ultimate TCR by NITE and UBSS. That link: Abusive naked shorting publicly traded shells and money laundering. My application was denied and there was no investigation into this link. The SEC had just bailed out a "known criminal enterprise":NITE "glitch" was not a forthcoming admission. Neither was the blatantly and knowingly false pretext for the DOJ dropping its UBSS x border DPA because "UBSS was in full compliance" in 2010. So, rather than open a new line of inquiry, the SEC chose to obstruct.

I made clear to Hoecker the egregious conflicts by Khuzami,White and Ceresney with clients UBS,JPM,CS, and DB. Hoecker claims to have conducted a "thorough" investigation of my very serious allegations and found nothing. Despite MJW waivers received to "investigate" her Swiss bank client CS. Then in 2019, Hoecker arrogantly told me I could file a FOIA request on his findings. Then, came 2019 and absolutely nothing had changed. NITE was still trading billions of shares of OTCM shells like ELTZ. There were still no risk disclosures. Cifu refused to publish KCG 2Q2017 financials, Hanover/Magna/AQR/Alpha/IMDS etc etc etc were still up and running . I filed ANOTHER complaint with IG Hoecker. Despite the fact that Hoecker himself wrote the IG handbook on "thorough investigations" mandating complainant interviews, I have never been interviewed by Hoecker. In addition, the IG Hoecker is mandated to inform Congress as to serious allegations like mine. He did not. In doing so, obstructed Congress from executing its oversight of the SEC/OWB. And despite hundreds of offers to fly to SEC HQ to have the best and brightest at the SEC rip apart my allegations 1 by 1 I have never been taken up on my offer. Why is that? The SEC OWB has gone to great lengths in other cases to explain the OWB process etc to whistleblowers. I have never been told "no thanks" for my information. In fact, McKessy has solicited MORE information from me after submitting my Berger TCR. In Madoff, an intern could have verified/shut down in weeks NOT years. No contra parties. Only a well orchestrated obstruction by SECNY/McCarthy et al kept it up and running. As I have also repeatedly told the SEC: My claims could be verified in weeks also. NITE has a P&L for every stock they trade. These, aggregated, are basis for quarterly trading profits. These P&L's, combined with OW data, and balance sheet data will validate ALL of my claims. I've offered my service to do exactly that. 2 weeks max. Afterall, proprietary trading strategies are NOT proprietary if they're

illegal. For the reasons I have listed in this summary, NITE/VIRT is on the SEC "do not investigate list". And yes, there most definitely is such a thing. Especially when it comes to illegal activity facilitated by the SEC. So, the SEC denial of my OpCo award claim which was 5 years in the making is just another example of my very serious allegations: The SEC solicits and uses whistleblower information like mine to both bring and obstruct complaints. Unethical. Illegal. To deny my award application because the "investigators" didn't see my information is further affirmation of my allegations. They saw it. They used it. They denied my compensation for it. Again Ms Norberg, I will forward my 2012 etc emails with Robin Traxler at FINRA as well as McKessy as further evidence that my Award application denial should be overturned. Further affirmation from 2 dissenting SEC Commissioners and the judge in the Gibraltar case makes this denial both egregious and bizarre. Bizarre ONLY if you believe that there is no SEC obstruction that is. BTW, crazy stuff going on with the firing of Mr Berman/Clayton nomination to take his place/Rabbitt to DoJ/Carpenito replacing Audrey Strauss/Trump/Barr don't you think? The SEC needs some fixers. Wonder why. I'm cc'ing some of our mutual friends on this email Jane. The last overt act of this massive ongoing, SEC facilitated conspiracy has not occurred yet.

Cheers!
Christopher J Dilorio
Whistleblower
[REDACTED]

From: Chris Dilorio <[REDACTED]>
Sent: Wednesday, June 10, 2020 2:30 PM
To: [REDACTED]
Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

Mr Roach,
The SEC is irrefutably using my information in unethical and illegal manner. My information is being used to BOTH Bring complaints AND obstruct/protect investigations into entities detailed in my various TCR's. Denying me rightful compensation. This is the latest example.....
Chris

From: Chris Dilorio <[REDACTED]>
Sent: Monday, May 18, 2020 10:36 AM
[REDACTED]
Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

As straightforward as it gets:
The SEC OWB dragged its feet for 5 years in issuing its preliminary denial notice.
The SEC knows this is my information. The SEC committed fraud on the court in Gibraltar. The judge corrected them. The SEC was omitting information that implicated NITE, UBSS and customers like Sason/Hanover/Magna. The SEC was obstructing a thorough investigation of my claims. The naked shorting cited in the CGFIA 10Q in 2013 PROVES my allegations. The SEC's "targeted investigation" stops short of a full accounting. The SEC

Gibraltar complaint does NOT explain the totality of the Oppenheimer complaint. The SEC Gibraltar complaint cites 1 OTCM shell and less than 1 million shares traded by Opco. 2 dissenting Opco waiver SEC Commissioners proved that also citing "BILLIONS" of shares in their dissent. The SEC/Opco AML complaint was based on the FINRA complaint and my information. The SEC OWB concocted a completely fabricated reason for denying my Award: "The SEC investigators involved never saw claimants information". The responsibility to distribute Whistleblower information within the SEC is the exclusive and explicit responsibility of the OWB. As a result, the massive fraud taking place continued well into 2020. The 1Q2020 10Q proves this.

The SEC IG Hoecker is guilty of violating specific IG requirements in keeping Congress informed of serious matters like mine. The SEC IG Hoecker has never interviewed me despite my filing 2 separate complaints with his office. The SEC IG Hoecker is guilty of criminal obstruction. SEC Chair Clayton and Co Enforcement Peikin worked at Sullivan Cromwell with Jared Fishman. Fishman has played a key role in the SEC facilitated criminal obstruction. Peikin and Clayton should have recused themselves from ANY pending NITE/VIRT matter before the SEC: My information. Clayton and Peikin should have recused themselves from the SEC facilitated KCG/VIRT merger. My information, including the Opco AML complaint SHOULD have stopped the merger from ever happening. 2 former SEC Commissioners agree with that analysis. The SEC is actively facilitating a massive ,ongoing fraud on the American people they are mandated to protect. NITE/VIRT is a criminal entity. The SEC MUST invoke emergency powers and halt trading in VIRT IMMEDIATELY.

In short Mr Arp, the criminal activity actively perpetrated by the SEC OWB/IG must be referred to law enforcement as well as Congress. Separate but related: SEC facilitated criminal activity and my claims. The criminality is a matter for law enforcement. My pending matters with the SEC have no bearing on a criminal investigation OR a GAO investigation.

You are incorrect in your analysis.

I Urge the IG Integrity Board to have SEC IG Hoecker refute my claims point by point.

I will be on a plane tomorrow so he can do it in person.

Cheers!

Christopher J Dilorio

Whistleblower

From: Chris Dilorio <[REDACTED]>

Sent: Tuesday, May 12, 2020 8:54 AM

To: [REDACTED]

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

Almost immediately I filed a formal appeal to the SEC OWB fabricated denial of my award application. In this appeal I show irrefutable proof of my allegations: The SEC OWB used/ is using my information to both bring complaints AND obstruct complaints while denying me compensation. In short: My information exposes an ongoing, massive in scope, SEC facilitated fraud on the American people. Rather than shut it down, the SEC has chosen to cover up so that the illegal activity can continue. It does in 2020

Chris

From: Chris Dilorio <[REDACTED]>

Sent: Monday, May 11, 2020 7:16 PM

To: [REDACTED]

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

From: Chris Dilorio <[REDACTED]>

Sent: Wednesday, April 29, 2020 8:03 AM

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

The SMOKING GUN in my allegations:

Naked shorting in CGFIA (My TCR/FINRA complaint) by "un named third party BD" in 2013. Well known to the SEC. This is why there was no investigation into the ENTIRETY of the FINRA trading activity. The SEC issued waivers to Opco within days of its AML complaint. WHO was the SEC protecting? WHO were the customers and executing BD's/MM's in the Opco complaint? ALSO well known to the SEC:

MY INFORMATION. 5 years to get a preliminary denial: statute of limitations. BUT the last overt act of this ongoing conspiracy has not yet occurred.

Chris

From: Chris Dilorio <[REDACTED]>

Sent: Wednesday, April 29, 2020 7:56 AM

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

Still more evidence of a well orchestrated scheme to cover up and obstruct a FULL SEC investigation into Opco/Gibraltar/NITE/UBSS trading activity in billions of shares of OTCM money laundering shells. The SEC used my information to bring AND obstruct complaints.

The 2 SEC Commissioners dissent in granting Oppenheimer waivers after this egregious activity

<https://www.sec.gov/news/statement/dissenting-statement-oppenheimer-inc.html>

SEC.gov | Dissenting Statement In the Matter of Oppenheimer & Co., Inc.

Dissenting Statement In the Matter of Oppenheimer & Co., Inc., by Commissioner Luis A. Aguilar and Commissioner Kara M. Stein, February 4, 2015

www.sec.gov

In fact, the SEC waivers came within days of their complaint. Here, these 2 Commissioners cite Oppenheimer trading "BILLIONS of shares of penny stocks". Clearly, they were not JUST referencing the SEC Gibraltar complaint. WHO was the SEC protecting with its complaint then waivers?

The smoking gun which I have provided to the SEC on several e mails:

Which came in an SEC reviewed CGFIA 10Q

https://www.sec.gov/Archives/edgar/data/1344394/000135448814000425/cgfi_10q.htm

cgfi_10q.htm - SEC

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

www.sec.gov

pg 27

"Our stock is subject to a "Global Lock" imposed by the Depository Trust and Clearing Corporation (DTCC)"

"On September 24, 2013, we were notified that the DTCC would be placing a 'Global Lock' on the Company's Class A stock as a result of actions by a third-party broker dealer. On November 11 2013, DTCC imposed the "Global Lock". Since less than 0.02% of the Company's Class A common stock shares were held within DTCC, Management chose to not undertake the expense of challenging the Global Lock. Nevertheless, shares that are held in street name (CEDE & CO), will not be able to be withdrawn from DTCC without further action."

Of Course, I have hard copies if you prefer.

ex clearing: The illegal SEC/DTCC Obligation Warehouse.

This is CLEAR, IREFUTABLE, INCONTROVETIBLE evidence of naked shorting by executing BD's in CGFIA. This activity took place per my Knight/UBSS TCR submitted to the SEC. So, WHY did the SEC obstruct an investigation into the ENTIRETY of the trading activity in the FINRA (and FINCEN) complaints? WHO were the executing BD's/MM's? WHO were the customers?

The veracity of my information is also irrefutable and incontrovertible.

Game. Set. Match. The SEC is a grossly corrupt, criminal enterprise facilitating illegal activity detailed by me so that this activity can continue. It does in 2020. The SEC solicits then uses Whistleblower information (MINE) to bring complaints AND obstruct other illegal activity while denying proper compensation to whistleblowers (ME). The SEC KNEW who the "third party BD" was in the CGFIA filing long before it filed its Opco complaint in 2015. It had my TCR in its possession in March 2013. So why did it take 5 years for the SEC to issue its preliminary denial? I would remind the SEC that this is very much an ONGOING conspiracy on the part of the SEC et al. IN FURTHERANCE OF THE CONSPIRACY.....

Cheers!

Christopher J Dilorio

Whistleblower

From: Chris Dilorio <[REDACTED]>

Sent: Tuesday, April 28, 2020 7:24 AM

[REDACTED]

EFTA00039855

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

Per my extensive SEC TCR's: Josh Sason/Emanuel/Abitebol/Hanover/Magna extensive overlap with NITE/VIRT (and AQR) money laundering shells.

The SEC Sason/Magna/NewLead Feb 2019 complaint: also my information

<https://www.sec.gov/litigation/complaints/2019/comp24403.pdf>

Marc P. Berger SECURITIES AND EXCHANGE COMMISSION Brookfield Place
200 Vesey Street, Suite 400 New York, NY 10281-1022 SOUTHERN
DISTRICT OF NEW YORK JOSHUA SASON, MARC MANUEL,

3 5. In addition, Pallas acted as an underwriter for a primary offering of NewLead stock, which NewLead attempted to disguise as an asset sale transaction.

www.sec.gov

https://www.sec.gov/Archives/edgar/data/1322587/000114420413065095/v361773_sc13g.htm

www.sec.gov

(i) Sole power to vote or to direct the vote . The information required by Item 4(c)(i) is set forth in Row 5 of the cover page for each Reporting Person hereto and is incorporated by reference for each such Reporting Person.

www.sec.gov

MG Partners Ltd: Abitebol

But not in the complaint: MAGNA GIBRALTAR INVESTMENTS LLC: also Abitebol

As with Opco/GIBRALTAR, who is the SEC protecting?

AND, per my extensive correspondence with the SEC re my TCR's: The SEC is ALSO grossly under estimating the criminal activity in NITE/Magna/NewLead

SEC: Criminals bailing out/actively facilitating criminals/criminal activity.

soliciting/using whistleblower information in unethical/illegal manner to bring complaints/obstruct complaints/deny whistleblower rightful compensation.

Cheers!

Christopher J Dilorio

Whistleblower

From: Chris Dilorio <[REDACTED]>

Sent: Tuesday, April 28, 2020 6:43 AM

EFTA00039856

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

More evidence of SEC fraud on the court in Gibraltar.

It is CLEAR that the Opco AML Covered Action 2015-016 was NOT ENTIRELY based on the SEC Gibraltar Action. The SEC Gibraltar action covered trading activity in just 1 OTCM Money laundering shell: Magnum d'Or where Opco traded less than 1 million shares. CLEARLY the SEC Opco complaint was based on the trading activity in the FINRA Opco AML complaint: my information. However, the SEC Opco complaint even stops short of a thorough investigation of the ENTIRETY of the FINRA trading activity. WHY? WHY didn't the SEC Opco/Gibraltar complaint go into trading activity in the FINRA AML OTCM shells through 2014 as FINCEN did? WHY did the SEC omit MATERIAL information to the court in Gibraltar causing a "significant under estimating" of criminal activity? The SEC knows who the accounts were. The SEC knows who the executing BD's/MM's were. The SEC committed a fraud on the court in Gibraltar.

Gibraltar was ROLLING OUT NEW OTCM services into the end of 2011.

<https://www.pr.com/press-release/355246>

Gibraltar Global Securities Now Offering Offshore Brokerage Accounts - PR.com

Nassau, Bahamas, The, September 22, 2011 --()-- Gibraltar Global Securities is now offering offshore brokerage accounts in addition to their broad array of financial services.Gibraltar Global ...

www.pr.com

<https://www.pr.com/press-release/355247>

GGSI Bahamas is Now Offering Pink Sheet Clearance

Offshore Broker Adds to Buying and Selling Services

www.pr.com

<https://www.pr.com/press-release/369649>

GGSI Bahamas Provides State-of-the-Art Security for OTC PINK Transactions and Communication

GGSI (Gibraltar Global Securities Inc.) has just announced the release of their latest security measures designed to protect their client's personal data, and to secure electronic communication.

www.pr.com

The SEC KNEW the Gibraltar/Opco trading activity went well beyond 2011 YET cut off its investigation at "well into 2010". Thus, KNOWINGLY omitting material information in Gibraltar: FRAUD ON THE COURT.

Confirming my allegations of SEC criminal activity in handling my information. WHY? to protect NITE and UBSS.
2 criminal entities bailed out by the SEC.

Now, the SEC is using the completely fabricated reason for denying my award claim for covered action 2015-016: "The investigators never saw the claimants information".

WHEN the explicit and exclusive responsibility to distribute whistleblower information within the SEC falls on the OWB itself.

More criminal activity.

Criminals bailing out criminals while denying Whistleblowers due process and compensation.

Cheers!

Christopher J Dilorio

[REDACTED]
Whistleblower

From: Chris Dilorio <[REDACTED]>

Sent: Sunday, April 26, 2020 9:36 AM

To: [REDACTED]

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

From: Chris Dilorio <[REDACTED]>

Sent: Friday, April 24, 2020 8:18 AM

[REDACTED]

Subject: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

I am in receipt of the SEC preliminary denial of my award claim for the Oppenheimer AML covered action 2015-016

This is my formal appeal of the SEC preliminary determination.

My award application was based on this very simple FACT:

The SEC (and FINCEN) Oppenheimer AML actions were based on the FINRA Oppenheimer AML action

FINRA

https://www.finra.org/sites/default/files/fda_documents/2009018668801_FDA_KMX39652.pdf

of - FINRA

which is FINRA a party, to the entry of findings and violations consistent with the allegations of the (as Complaint sanctions amended and by the Offer of Settlement), to the imposition of the set forth and below, understands fully that this Order will become part of Respondent's permanent disciplinary and record may any be considered in future actions brought by FINRA. BACKGROUND ...

www.finra.org

The SEC

<https://www.sec.gov/litigation/admin/2015/33-9711.pdf>

Before the SECURITIES AND EXCHANGE COMMISSION

Before the . SECURITIES AND EXCHANGE COMMISSION . SECURITIES ACT OF 1933 . Release No. 9711 / January 27, 2015 . SECURITIES EXCHANGE ACT OF 1934 . Release No. 74141 / January 27, 2015 . ACCOUNTING AND AUDITING ENFORCEMENT . Release No. 3621 / January 27, 2015 . ADMINISTRATIVE PROCEEDING . File No. 3 -16361 . In the Matter of

www.sec.gov

FINCEN

<https://www.fincen.gov/news/news-releases/fincen-fines-oppenheimer-co-inc-20-million-continued-anti-money-laundering>

FinCEN Fines Oppenheimer & Co. Inc. \$20 Million for Continued Anti-Money Laundering Shortfalls | FinCEN.gov

Washington, D.C. – The Financial Crimes Enforcement Network (FinCEN), working closely with the U.S. Securities and Exchange Commission (SEC), assessed a \$20 million civil money penalty today against Oppenheimer & Co., Inc., for willfully violating the Bank Secrecy Act (BSA). Oppenheimer, a securities broker-dealer in New York, admitted that it failed to establish and implement an adequate ...

www.fincen.gov

In the summer of 2012, I had extensive correspondence with Robin Traxler at FINRA where I also cc'd Sean McKessy then SEC OWB Chief. The CURRENT OWB Chief and the SEC IG are in possession of this correspondence. My correspondence dealt with 2 penny stock shells cited in my Knight Capital TCR submitted by Berger Montague in March 2013 attached here: Colorado Goldfields and AppTech. Both shells were NITE and UBSS top traded OTCM shells in 2010-2013. These 2 shells were cited by FINRA in their Oppenheimer AML complaint. Again, the SEC and FINCEN Oppenheimer AML complaints were based on this FINRA complaint. In fact, per the FINRA Opco complaint above, customer "TC" was dumping worthless AppTech (APCX) certificates well into mid 2010. DIRECTLY overlapping with the NITE/UBSS APCX trading activity cited in my Berger 2013 TCR attached and discussed by me with Robin Traxler at FINRA. HOW is it possible that the SEC OWB didn't share my information with SEC investigators? Current SEC OWB Chief Norberg was previously an assistant to then OWB Chief McKessy.

WHO ultimately executed the trades cited in the FINRA Opco complaint?

Further, the SEC Gibraltar Securities complaint raises more questions than answers as well.

<https://www.sec.gov/litigation/complaints/2013/comp22683.pdf>

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK
SECURITIES AND EXCHANGE COMMISSION, 13 Civ. GffirALTAR GLOBAL
SECURITIES, COMPLAINT NATURE OF THE ACTION - SEC.gov

12. David Della Sciucca, Jr., age 27, is a resident of Fort Lauderdale, Florida. In the Magnum d'Or complaint, the Commission charged Della Sciucca with acting as a nominee

www.sec.gov

The SEC Gibraltar Securities complaint references only 1 OTCM money laundering shell: Magnum d'Or. The complaint specifically states that Oppenheimer sold just 969,822 shares. Again, no mention of executing BD/MM.

The SEC Oppenheimer AML cites Gibraltar trading activity also.

The share amounts in the SEC complaint grossly under estimate that in the FINRA complaint. WHY?

The judge in the Gibraltar case said "the SEC's requested amount CLEARLY UNDERESTIMATES the defendants ill-gotten gains...."

<http://www.tribune242.com/news/2016/jan/13/bahamian-broker-25m-sanction/>

Bahamian broker in \$25m sanction | The Tribune

A former Bahamian broker/dealer and its principal have been hit with a combined \$24.484 million in financial sanctions by a US court, which found that their "ill gotten gains" were likely ...

www.tribune242.com

WHY didn't the SEC go after ALL of the sellers in the FINRA Opco AML complaint? WHY did the SEC "strip out" \$46 million from the Gibraltar ill gotten gains claiming the customers were "UNKNOWN"? WHO is the SEC protecting? WHO were the executing BD's/MM's in the FINRA Opco CGFIA and APCX trades? They certainly know who the customers were. Is customer "JK" Justin Keener/JMJ also in my March 2013 TCR attached? While the SEC Opco AML was based on the FINRA Opco AML, it stopped short of a thorough investigation of NITE and UBSS. In fact, the trading activity of NITE/VIRT and UBSS in the FINRA complaint: my information SHOULD have triggered an immediate investigation of NITE and UBSS. It did not. Did the SEC commit fraud on the court in its OMISSION of material information?

The timing of the SEC's preliminary determination and the reasoning for the denial ALSO raises more questions than answers.

My Award application for the Oppenheimer AML SEC complaint was 5 years ago. That's FIVE years ago. So, WHY NOW am I so blessed by the SEC with a preliminary judgement?

The SEC basis for denying my Award claim for covered action 2015-016:

"Investigative staff responsible for the covered action NEVER RECEIVED ANY INFORMATION FROM THE CLAIMANT OR had any communication with the claimant"

Let's take this whopper in 2 parts:

First, the SEC OWB denied my Award application because The investigators in the complaint never received my information. Has the SEC OWB re written the investigative protocol in this denial? How am I or ANY whistleblower supposed to know WHO the investigators are in a particular case WHEN according to the SEC: ALL investigations are done in a confidential manner????

WHAT DOES THE SEC DO WITH WHISTLEBLOWER TIPS EXACTLY? Do they share whistleblower information with ENFORCEMENT as is mandated? HOW would ANY whistleblower know WHO to share information with at the

SEC? Isn't that the job of the SEC OWB?

Second, the fact that no one at the SEC contacted me DOES NOT mean the SEC didn't use my information. This is a completely bogus argument. It certainly would NOT be the first time the SEC used my information now would it Jane?

In fact, it is NOT the responsibility of the whistleblower to get his/her information to the right Enforcement personnel. That responsibility EXPLICITLY falls on the SEC OWB. So, is the SEC OWB admitting gross negligence in handling my information? After the monumental failure in the Madoff Ponzi/ money laundering SEC facilitated scam on the public the then SEC IG made specific recommendations to the SEC with regards to the proper handling/vetting of Tips and Complaints.

<https://www.sec.gov/files/468.pdf>

Review and Analysis of OCIE Examinations of Bernard L. Madoff Investment Securities, LLC

Review and Analysis of OCIE Examinations of Bernard L. Madoff Investment Securities, LLC Executive Summary Background. On June 25, 2009, the Securities and Exchange Commission's

www.sec.gov

AGAIN: The responsibility to properly vet Whistleblower information and get the information into the right hands at the SEC falls EXPLICITLY and EXCLUSIVELY with the SEC OWB itself and is NOT the responsibility of the whistleblower. Further, according to the previous SEC IG in the monumental Madoff failure: the responsibility to contact those supplying Tips and Complaints ALSO falls explicitly and exclusively with the SEC OWB and not the whistleblower. Using these excuses as the basis of denial of Award is completely contrary to SEC MANDATED protocols and procedures.

Is the SEC OWB admitting it doesn't comply with those recommendations? Recall: the monumental SEC Madoff failure was NOT the fault of Whistleblowers either. OR is the SEC OWB scrambling for a 5 years in the waiting preliminary determination?

So, after 5 years of waiting for a preliminary determination for my award claim, this is what the SEC best and brightest come up with?

My Denial of Award for covered action 2015-016 was completely made up on the fly.

The SEC OWB has applied completely fabricated "rules" to issue this denial. Further affirmation of ALL of my allegations.

Also by SEC admission, the SEC allowed these 2 penny stock shells to remain a clear and present risk to the investing public. Were CGFIA and APCX ONLY money laundering shells for Oppenheimer in 2008-2010 and then suddenly they were no longer money laundering shells when NITE and UBSS traded billions of shares of both shells 2010-2013?

WHY did it take until September 2018 before the SEC finally revoked the CGFIA registration?

<https://www.sec.gov/cgi-bin/browse-edgar?company=Garpa&owner=exclude&action=getcompany>

So, WHY was there no SEC investigation of NITE and UBSS trading activity in money laundering shells APCX and CGFIA? The SEC et al facilitated NITE "glitch" took place in August 2012. This SEC/Jefferies/JPM/BX/GS/SEC Chair Clayton Sullivan Cromwell colleague Jared Fishman et al bailout coincides directly with NITE trading activity in 2 SEC/FINRA/FINCEN acknowledged money laundering shells. AND the "bailout" penny stock esque reverse merger between Getco and Knight didn't close until July 2013. HOW could the SEC conduct a COMPLETE and thorough investigation into the FINRA Opco AML complaint WITHOUT implicating NITE when NITE was CLEARLY trading billions of shares of OTCM money laundering shells BEFORE and coinciding with the SEC et al facilitated

"glitch" bailout? For UBSS, the DOJ dropped its cross border AML DPA complaint in 2010. UBSS was trading money laundering shells well after the DOJ claimed UBSS was in compliance with the cross border DPA. To be clear: BOTH NITE and UBSS knew CGFIA and APCX were money laundering shells when they traded billions of shares of each 2010-2013. Is that FACT disputed by the SEC? The SEC OBSTRUCTED a thorough investigation into the ENTIRETY of trading activity of NITE and UBSS in CGFIA and APCX: MY CLAIMS. Josh Sason/Hanover/ Magna knew CGFIA was a money laundering shell also

<https://www.sec.gov/Archives/edgar/data/1344394/000114420413041432/0001144204-13-041432-index.htm>

ALSO in my claims: Joshua Sason/Hanover Magna. CGFIA. Also my NewLead TCR1426518350699 and FreeSeas TCR1440274395191 separate but related TCR's where NITE was a top trader in both and BOTH TCR's were filed well in advance (years prior) to the Sason/Hanover/Magna February 2019 complaint. Here's one thing the SEC has been consistent about: The SEC ignores the role of executing BD's and MM's in these scams. WHY? Because NITE is the #1 OTCM shell trader. As far as the SEC is concerned Penny stock trading fairies convert worthless certificates into real money. NO! Executing BD's/MM's like NITE do. Did Oppenheimer sell this order flow to NITE? Who ultimately converted these worthless certificates to real money? As the number 1 OTCM money laundering shell trader it is statistically improbable the NITE has never been the focus of an SEC AML complaint. Per my TCR: what does the NITE Compliance Department do exactly? How many SAR's has NITE filed in the last 10 years? In a 2015 SIFMA speech then SEC Enforcement Director Ceresney was "SHOCKED" by the number of BD's filing 1 or ZERO SAR's. That was just 5 years ago. WHEN would NITE file a SAR related to the billions of shares of OTCM money laundering shells it trades like CGFIA and APCX: BEFORE or AFTER it trades those BILLIONS of shares? Does NITE pull markets and alert regulators OR continue to trade billions of shares of OTCM money laundering shells in the face of GLARING AML red flags? In fact, in December 2019 the top traded NITE/VIRT OTCM money laundering shell was ELTZ

<https://www.sec.gov/cgi-bin/browse-edgar?>

[action=getcompany&CIK=0001607281&owner=exclude&count=40&hidefilings=0](https://www.sec.gov/cgi-bin/browse-edgar?action=getcompany&CIK=0001607281&owner=exclude&count=40&hidefilings=0)

The SEC knows the people/entities in ELTZ well

<https://www.sec.gov/litigation/admin/34-46993.htm>

Strata Coal Company and Terrence A. Tecco: Admin. Proc. Rel. No. 34-46993 / December 13, 2002

Strata Coal Company ("Strata" or "the company") is a non-reporting Nevada shell corporation based in Frisco, Texas. Strata's shares are quoted on the Pink Sheets under the symbol SCOC. Until September 2002, the company was known as WesPac Technologies, at which time it changed its name to Strata. 2. Tecco is the sole officer, director, and ...

www.sec.gov

<https://www.sec.gov/news/press-release/2019-16>

SEC.gov | SEC Charges Broker-Dealer and Transfer Agent in Microcap Shell Factory Fraud

The Securities and Exchange Commission today announced charges against a broker-dealer, a transfer agent, and three individuals for their roles in the creation of over a dozen undisclosed "blank check" companies from 2009 to 2014.

Doesn't the NITE/VIRT compliance Department have internet service in Jersey City? As a DIRECT result of the SEC obstructing a complete and thorough investigation into the ENTIRETY of trading activity in APCX and CGFIA, the top NITE/VIRT traded OTCM money laundering shell in December 2019 was AML red flags galore ELTZ. Illegal activity ACTIVELY facilitated by the SEC. The examples cited in this e mail are not exhaustive.

And, for it's part AppTech is up and running again/still

<https://www.sec.gov/cgi-bin/browse-edgar?company=Apptech&owner=exclude&action=getcompany>

Unfortunately, AppTech is still up and running as a direct result of the aforementioned SEC " CLEARLY under estimating" otherwise known as CLEARLY OBSTRUCTING.

In conclusion, The SEC solicits information from whistleblowers like me. The SEC uses whistleblower information to bring actions and then doesn't compensate whistleblowers for their information.

OR

The SEC uses whistleblower information to protect criminality perpetrated on the investing public so that this criminal activity can continue. BOTH are gross dereliction of the stated and MANDATED SEC Whistleblower statutes. To blame a whistleblower for the SEC's EXPLICIT and EXCLUSIVE responsibility to properly vet and distribute whistleblower information within the SEC as an excuse to deny Awards is also criminal activity. The SEC: criminals using whistleblower information to protect other criminals AND deny whistleblower rightful compensation for their information.

I appeal the SEC preliminary determination and wish to file ANOTHER complaint with the SEC IG.

Cheers!

Christopher J Dilorio

Janey,

how long have you been in possession of my Knight Capital TCR? Almost 7 years to the day. How many follow up e mails have I sent the SEC since then?

For 7 fucking years, the SEC has known about JMJ/Keener. I told them

<https://www.sec.gov/litigation/complaints/2020/comp-pr2020-72.pdf>

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA SECURITIES AND EXCHANGE COMMISSION No. COMPLAINT SUMMARY - sec.gov

5. Justin W. Keener, age 45, resides in San Juan, Puerto Rico. During the Relevant Period, Keener was a resident of Miami Beach, Florida. Keener registered the name "JMJ Financial" as a fictitious name in Florida in 2008 and used it to conduct the business described

In February 2019, the SEC brought an action against Joshua Sason/NewLead
I told the SEC about Magna/ Sason ALSO in my 2013 TCR.

<https://www.sec.gov/litigation/litreleases/2019/lr24403.htm>

Joshua Sason, et al. (Release No. LR-24403; Feb. 15, 2019)

Washington, D.C., February 15, 2019 - The Securities and Exchange Commission today announced charges against four individuals and related businesses for their roles in two microcap frauds and unlawful securities offerings.

www.sec.gov

AND, I filed separate but related NewLead and FreeSeas TCR's in 2015

Then there's the UBS AML complaint.

ALSO my claims. For which I sent 10 (TEN) separate Award applications from a commercial fax machine in April/May 2019. AND I have YET to receive even a preliminary determination from the OWB/Norberg IG, I see your "investigation" into my very very serious accusations of Obstruction related to my information was thorough. In short, the SEC has and still is ripping me off.

Janey, be a hun and update my TCR's/Awards cited in this e mail.

And Ms Welshhans, a couple of questions for you:

1) Have you read the FINRA WTFC Keener complaint? Fictitious notes Ring a bell?

Same MO as Sason/Magna/NewLead/FreeSeas etc etc etc

2) WHO executed the Keener OTCM trades in your complaint? Penny stock trading fairies?

YES, NITE was a top trader in BOTH FreeSeas and NewLead

The core business at NITE/VIRT is and ALWAYS has been: abusive naked shorting OTCM (and other) shells to facilitate money laundering.

In short Ms Welshhans, NITE/VIRT converts these worthless certs into real money. NONE of JMJ/Sason/IBC/Ironridge/Asher etc etc etc activity takes place without a willing, corrupt, criminal, executing BD/MM like NITE/VIRT, CDEL etc

Finally, The Keener SEC complaint is FURTHER evidence that FINRA has NO business enforcing US securities LAWS. When FINRA "invited" Keener to a disciplinary hearing almost 7 years ago, Keener told them to "fuck off". FINRA bar meant nothing the last 7 years. EXCEPT JMJ/Keener/NITE ripping off more investors.

Obviously the SEC has/is using my information. I expect to be compensated.

Cheers!

Christopher Dilorio

Whistleblower
[REDACTED]

Mr Peirce,

Congratulations on your nomination as SEC Commissioner. I have read your paper on FINRA lack of accountability. I believe the SEC has abdicated its responsibility to enforce Broker Dealer compliance with the BSA to FINRA BECAUSE it is not accountable. The SEC has not initiated a single stand alone AML complaint.

The Brown Brothers Harriman AML complaint IS my claim. ALL of the entities in the complaint are un named WHY? My SEC and IRS Whistleblower complaints explain why.

Hello, My name is Chris DiIorio. I have filed extensive SEC and IRS Whistleblower complaints alleging a direct link between penny stock money laundering, domestic and foreign entities, Swiss Banks, and executing brokers like KCG and UBS. I can provide overwhelming evidence of SEC obstruction. Please read the FINRA Brown Brothers Harriman AML complaint. This is my claim. All of the entities in the complaint are un named. Why? The SEC is not only obstructing an investigation, they are aiding and abetting the activity. These are not far flung theories. The UBS Whistleblower Birkenfeld and his attorney sent 52,000 accounts to the SEC and DOJ. The DOJ at the influence of President Obama and Hillary Clinton entered into the UBS DPA based on just 4400. What is so egregious is the activity continues unabated today.

Start with the so called August 2012 Knight/KCG trading "glitch". Initial reports say the NYSE was breaking the trades. WHY did they stop. Former KCG CEO Joyce said he had a very frank discussion with then SEC Chair Schapiro where the SEC wanted to send a very strong message to market participants. Why not just continue to break the trades and hit KCG with a hefty fine? That would not create the conditions to grant KCG exception after exception to do their emergency funding which transferred 74% of the company to "glitch" funding participants and ultimate reverse merger partner GETCO. AND, despite claiming to having a "highly liquid balance sheet" KCG had to raise the entire amount of the loss.

A very significant and public event was cited in a WSJ article where immediately following the "glitch" KCG inadvertently sent 4000 worthless securities to JPM in an attempt to secure a tri party financing where JPM guaranteed the loan. This is discussed in my attached TCR's and also the topic in a March 2014 letter I sent to the SEC. In the end, the emergency funding was NOT collateral based. The participants knew exactly what a fraud the KCG balance sheet was. After the stock was decimated to \$3, the deal was a convertible with a conversion price at a 50% discount or \$1.50/ share.

There is much more, but this is a good start.

Recently, KCG did a modified Dutch auction where they "sold" an asset (HotSpot) to an entity both KCG and GETCO were a major shareholder (BATS) KCG CEO Coleman called it a "highly competitive process". Virtually all of the proceeds went to buy back stock from "glitch" financing participants. The purchase price was \$14/share. The stock had never traded there and hasn't since. Reports say 82 million shares were tendered at or BELOW \$14. But they chose to repurchase 23 million shares AT \$14????? I have overwhelming evidence that supports my allegations that the SEC is engaging in criminal obstruction to protect KCG.

1) Current KCG Dan Coleman ran Equities at UBS during the massive REG Sho violations as well as the cross border activity detailed by Whistleblower Birkenfeld. White and Ceresney represented UBS prior to joining the SEC

2) At June 30 2011 KCG/Knight reported just 105 million in working capital with hundreds of millions in worthless securities sitting on its balance sheet. KCG was insolvent

3) The SEC orchestrated the emergency funding for KCG following the so called Aug 2012 trading "glitch"

4) Read FINRA AML complaints against Brown Brothers Harriman. This is my claim. It links penny stock money laundering to executing brokers like KCG, domestic and foreign entities, and Swiss banks. ALL of the entities in the complaint are un named. WHY?

5) The FINRA World Trade Financial AML complaint discusses several entities cited in my claims. The customer the complaint focuses on is Justin Keener. Still very much in business. The red flags cited by FINRA were cited in my claims as well. Yet still no investigation.

6) in July 2015 I contacted Kevin Goodman Dir OCIE for Broker Deals at the SEC. He had never seen my information. The IG OCIE Madoff report mandated the OCIE to vet information. McKessy and Ceresney never sent my info to him

7) I'm sure you are familiar with the Manning v Merrill, KCG, UBS et al litigation. The SEC does not want an investigation into my claims while the litigation is pending.

8) My claims detail ex clearing trading activity by KCG and UBS. despite the glaring red flags in doing so. Ex clearing s the Obligation Warehouse. A NON GUARANTEED SERVICE set up by the SEC and DTCC to allow firms like KCG to circumvent close out requirements of Rule 204. Clearly contrary to the intent of the SEC

authorization in Sec 17a of the 1934 Act to create a system of prompt and timely settlement and to remove impediments there of.

In short, I told the SEC KCG was insolvent in 2011. Rather than investigate and prosecute, they chose to obstruct. The activity in my TCR's pre dates the "glitch". An investigation would show the SEC bailed out a criminal enterprise. Because of the obstruction, the activity continues today unabated in stocks like STBV,VELA,NEWL,FREE, and dozens more. The investing public remains at risk

More to come
Chris Dilorio

From: "[REDACTED]" >

To: "[REDACTED]" >

Cc: [REDACTED]
[REDACTED]

Subject: OPR Epstein Final Report

Date: Thu, 12 Nov 2020 15:06:42 +0000

Attachments: OPR-458587-v1-Epstein_Report_transmittal_to_SDNY_(letter_signed).PDF; OPR-458557-v1-Epstein_Report_of_Investigation_and_Exhibits_pdf.PDF

Attached please find OPR's final Report in the Jeffrey Epstein matter, and a transmittal letter.

From: [REDACTED] (USANYS) [Contractor]" [REDACTED]

To: [REDACTED]

Cc: [REDACTED]

Subject: Fwd: STATEMENT ON DOJ OFFICE OF PROFESSIONAL RESPONSIBILITY REPORT ON JEFFREY EPSTEIN 2006-2008 INVESTIGATION

Date: Thu, 12 Nov 2020 18:59:52 +0000

FYI

[REDACTED]
Chief Public Information Officer
U.S. Attorney's Office, SDNY
[REDACTED]

Begin forwarded message:

From: "USDOJ-Office of Public Affairs" [REDACTED]

Date: November 12, 2020 at 1:56:08 PM EST

To: [REDACTED]

Subject: STATEMENT ON DOJ OFFICE OF PROFESSIONAL RESPONSIBILITY REPORT ON JEFFREY EPSTEIN 2006-2008 INVESTIGATION

Reply-To: [REDACTED]

EFTA00039868

The United States Department of Justice

FOR IMMEDIATE RELEASE
WWW.JUSTICE.GOV/NEWS

THURSDAY, NOVEMBER 12, 2020

NOTE: The executive report summary can be found [here](#).

**STATEMENT ON DOJ OFFICE OF PROFESSIONAL
RESPONSIBILITY REPORT ON JEFFREY EPSTEIN 2006-
2008 INVESTIGATION**

WASHINGTON -- The executive summary of a report by the Department of Justice's Office of Professional Responsibility (OPR) was released today to affected victims. The summary, which is available on the Justice Department website, provides the essential details about the findings of OPR's investigation into the U.S. Attorney's Office for the Southern District of Florida's resolution of

its 2006–2008 federal criminal investigation of Jeffrey Epstein and its interactions with victims during the investigation.

While OPR did not find that Department attorneys engaged in professional misconduct, OPR concluded that the victims were not treated with the forthrightness and sensitivity expected by the Department. OPR also concluded that former U.S. Attorney Acosta exercised poor judgment by deciding to resolve the federal investigation through the non-prosecution agreement and when he failed to make certain that the state of Florida intended to and would notify victims identified through the federal investigation about the state plea hearing.

In order to fully respect the rights and dignity of Jeffrey Epstein's many victims, the Department first invited victims and their legal representatives to be briefed this morning on the report's contents. The Privacy Act prohibits the Department from releasing the full report publicly, but permits the report to be disclosed upon request to a congressional committee with jurisdiction over the matter, and this has been done.

We salute the courage of survivors as they again are confronted with these horrible crimes and their aftermath. The Department will thoroughly review the report, which will inform our implementation of the Crime Victims Rights' Act and the Attorney General's Guidelines on Victim and Witness Assistance.

###

The year 2020 marks the 150th anniversary of the Department of Justice. Learn more about the history of our agency at www.Justice.gov/Celebrating150Years.

OPR

20-1227

Do not reply to this message. If you have questions, please use the contacts in the message or call the Office of Public Affairs at 202-514-2007.

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EFTA00039870

From: [REDACTED]

To: [REDACTED]

Cc: [REDACTED]

Subject: RE: FW: Ghislaine Maxwell 02879-509

Date: Mon, 16 Nov 2020 17:35:53 +0000

Hi [REDACTED]

I'll be available at my desk for the next hour, but I'll be on back-to-back calls from 1:30pm to 6pm. Would you be able to please call me before 1:30 today?

Thanks
[REDACTED]

From: [REDACTED]

Sent: Monday, November 16, 2020 10:37 AM

To: [REDACTED]

Cc: [REDACTED]

Subject: RE: FW: Ghislaine Maxwell 02879-509

No problem, thanks very much. I'm at my desk - [REDACTED]

From: [REDACTED]

Sent: Monday, November 16, 2020 10:35 AM

To: [REDACTED]

Cc: [REDACTED]

Subject: Re: FW: Ghislaine Maxwell 02879-509

Yes, sorry it has been crazy. Give me a few minutes. what number?

>>> [REDACTED] 11/16/2020 10:29 AM >>>

Hi [REDACTED]

Are you available for a call today to discuss Maxwell? In addition to Bobbi's email, I'd like to discuss the logistics of delivering a laptop for Maxwell to use when reviewing her discovery.

Thanks,
[REDACTED]

Assistant United States Attorney
Southern District of New York
1 St. Andrew's Plaza
New York, NY 10007
[REDACTED]

From: BOBBI C STERNHEIM - [REDACTED]

Sent: Monday, November 16, 2020 9:50 AM

To: BRO-ExecAssistant-S - [REDACTED]

Cc: [REDACTED]

Subject: Ghislaine Maxwell 02879-509

Good afternoon-

I am informed that the NYC Dept. of Design & Construction will shut off water and heat to the MDC from 9:00 pm to 5:00 am beginning tonight until 11/21. I am further informed that the MDC will give inmates one bottle of water and an extra blanket due to this disruption of services.

I am requesting that my client - Ghislaine Maxwell (02879-509)

be moved from her present isolation cell with two exterior walls to an interior cell.

Please explain why she cannot be moved to the cell in the

dayroom area where, by Court order, she is permitted to review discovery

EFTA00039872

from 7:00 am to 8:00 pm.

Thank you-

Bobbi C. Sternheim

BOBBI C. STERNHEIM, ESQ.

Law Offices of Bobbi C. Sternheim

33 West 19th Street - 4th Floor

New York, NY 10011



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On Nov 10, 2020, at 1:45 PM, BRO-ExecAssistant-S <[REDACTED]> wrote:

The City contacted us and they said the water and heat will not be shut off. The information has been posted on the inmate Bulletin.

>>> BOBBI C STERNHEIM [REDACTED] 11/9/2020 3:47 PM >>>

Good afternoon-

I am informed that the NYC Dept. of Design & Construction will shut off water and heat to the MDC from 8:30 pm to 4:00 am beginning tonight until 11/17.

I am further informed that the MDC will give inmates a bottle of water and an extra blanket due to this disruption of services.

I am requesting that my client - Ghislaine Maxwell (02879-509) be moved from her present isolation cell with two exterior walls to an interior cell.

Please explain why she cannot be moved to the cell in the dayroom area where, by Court order, she is permitted to review discovery from 7:00 am to 8:00 pm.

Thank you-

Bobbi C. Sternheim

BOBBI C. STERNHEIM, ESQ.

Law Offices of Bobbi C. Sternheim

33 West 19th Street - 4th Floor

New York, NY 10011



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Thank you.

From: "[REDACTED]" <[REDACTED]>
To: BOBBI C STERNHEIM <[REDACTED]>, [REDACTED]
<[REDACTED]>, [REDACTED] <[REDACTED]>
Cc: "[REDACTED]" <[REDACTED]>, "[REDACTED] (USANYS)"
<[REDACTED]>
Subject: RE: Ghislaine Maxwell 02879-509
Date: Mon, 16 Nov 2020 18:06:58 +0000

Bobbi,

Thank you for including me on this email. I understand from my conversation with MDC legal counsel today that MDC staff is continuing to monitor temperatures throughout the facility, including in the area where Ms. Maxwell is housed. My understanding is that the temperature where Ms. Maxwell is housed remains within the limits prescribed by BOP policy and that the MDC does not expect this week's activities to affect the temperature in Ms. Maxwell's cell. That said, they will continue to monitor the temperature and take appropriate action if it falls below prescribed limits.

As has previously been conveyed via letter from the Government to defense counsel dated October 8, 2020, the MDC's assessment continues to be that Ms. Maxwell's current cell is the most appropriate placement for Ms. Maxwell both for her safety and the security of the institution.

Finally, you have referenced a court order directing that certain steps be taken by the BOP. The only order of which I am aware is Judge Nathan's order dated August 25, 2020, which denied Ms. Maxwell's request for an order concerning the conditions of confinement at the MDC (*See* Dkt. No. 49 at 2-3). Please let me know if there is a different order to which you are referring.

Best,

[REDACTED]
[REDACTED]
Assistant United States Attorney
Southern District of New York
1 St. Andrew's Plaza
New York, NY 10007
[REDACTED]
[REDACTED]

From: BOBBI C STERNHEIM
Sent: Monday, November 16, 2020 9:50 AM
To: [REDACTED]; [REDACTED]
Cc: [REDACTED]
Subject: Ghislaine Maxwell 02879-509

Good afternoon-

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be moved from her present isolation cell with two exterior walls to an interior cell.

Please explain why she cannot be moved to the cell in the dayroom area where, by Court order, she is permitted to review discovery from 7:00 am to 8:00 pm.

Thank you-

Bobbi C. Sternheim
BOBBI C. STERNHEIM, ESQ.
Law Offices of Bobbi C. Sternheim
33 West 19th Street - 4th Floor
New York, NY 10011

Main: [REDACTED]
Cell: [REDACTED]
Fax: [REDACTED]
[REDACTED]

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On Nov 10, 2020, at 1:45 PM, [REDACTED] <[REDACTED]> wrote:

The City contacted us and they said the water and heat will not be shut off. The information has been posted on the inmate Bulletin.

>>> BOBBI C STERNHEIM <[REDACTED]> 11/9/2020 3:47 PM >>>

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Please explain why she cannot be moved to the cell in the dayroom area where, by Court order, she is permitted to review discovery from 7:00 am to 8:00 pm.

Thank you-

Bobbi C. Sternheim

BOBBI C. STERNHEIM, ESQ.

Law Offices of Bobbi C. Sternheim

33 West 19th Street - 4th Floor

New York, NY 10011

Main: [REDACTED]
Cell: [REDACTED]
Fax: [REDACTED]
[REDACTED]

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From: "[REDACTED]" >

To: [REDACTED] >

Cc: [REDACTED]
[REDACTED]
[REDACTED]

Subject: Maxwell discovery productions & laptop

Date: Wed, 18 Nov 2020 14:25:39 +0000

Attachments: 2020-11-18_GM_letter_to_MDC_re_laptop.pdf; ATT00001.htm; 2020.11.18_MDC_-_Maxwell_MAIN.pdf; ATT00002.htm; 2020.11.18_MDC_-_Maxwell_PASSWORD.pdf; ATT00003.htm; 2020.11.09_MDC_-_Maxwell_MAIN.pdf; ATT00004.htm; 2020.11.09_MDC_-_Maxwell_PASSWORD.pdf; ATT00005.htm

H [REDACTED],

This morning, I dropped off the laptop with a power cord and cover memo for Maxwell to use when reviewing her discovery. Attached please find a copy of the cover memo.

I also dropped off a hard drive and CD containing a new discovery production for Maxwell. Attached please find the two cover letters.

Last week, we sent out via FedEx a hard drive containing a separate production, which included replacements of numerous files that Maxwell has been unable to review from prior productions. The accompanying cover letters are attached. Would you please confirm that the drive has been provided to Maxwell?

Thanks very much, as always, for your help.

[REDACTED]

[REDACTED]

Assistant United States Attorney

Southern District of New York

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

November 18, 2020

BY HAND & EMAIL

MDC—Metropolitan Detention Center
Legal Department
80 29th Street
Brooklyn, NY 11232

Re: *United States v. Ghislaine Maxwell, 20 Cr. 330 (AJN)*

Enclosed is discovery pertinent to the following inmate:

- Ghislaine Maxwell [REDACTED]

Please allow her access to the materials enclosed.

Very truly yours,

AUDREY STRAUSS
Acting United States Attorney

by:

[REDACTED]
[REDACTED]
[REDACTED]
Assistant United States Attorneys
[REDACTED]

Enclosure



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

November 18, 2020

BY HAND & EMAIL

MDC—Metropolitan Detention Center
Legal Department
80 29th Street
Brooklyn, NY 11232

Re: *United States v. Ghislaine Maxwell, 20 Cr. 330 (AJN)*

The password for the drive containing discovery materials pertinent to Ghislaine Maxwell [REDACTED] is [REDACTED] and the password for the CD containing discovery materials pertinent to Ghislaine Maxwell [REDACTED] is [REDACTED]!

Very truly yours,

AUDREY STRAUSS
Acting United States Attorney

by:

[REDACTED]
[REDACTED]
[REDACTED]
Assistant United States Attorneys
[REDACTED]



U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

November 9, 2020

BY FEDERAL EXPRESS

MDC—Metropolitan Detention Center
Legal Department
80 29th Street
Brooklyn, NY 11232

Re: *United States v. Ghislaine Maxwell, 20 Cr. 330 (AJN)*

Enclosed is discovery pertinent to the following inmate:

- Ghislaine Maxwell: [REDACTED]

Please allow her access to the materials enclosed.

Very truly yours,

AUDREY STRAUSS
Acting United States Attorney

by: [REDACTED]

[REDACTED]
Assistant United States Attorneys
[REDACTED]

Enclosure



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

November 9, 2020

BY FEDERAL EXPRESS

MDC—Metropolitan Detention Center
Legal Department
80 29th Street
Brooklyn, NY 11232

Re: *United States v. Ghislaine Maxwell, 20 Cr. 330 (AJN)*

The password for the drive containing discovery materials pertinent to Ghislaine Maxwell

is [REDACTED]

Very truly yours,

AUDREY STRAUSS

Acting United States Attorney

by: [REDACTED]

Assistant United States Attorneys

From: "Strauss, Audrey (USANYS)" <[REDACTED]>

To: "[REDACTED]" >

Subject: Re: Message from Audrey

Date: Fri, 10 Jul 2020 15:08:20 +0000

[REDACTED]

Looking forward to our virtual congratulatory meeting.
Meanwhile I am sure you have plenty to do preparing for the most popular bail hearing ever held.
You drafted a fine memo. I am sure you will be great.
Audrey

Sent from my iPhone

On Jul 10, 2020, at 10:01 AM, [REDACTED] > wrote:

Hi Audrey,

Thanks so much for your strong support of the Maxwell and Epstein cases. This work has been incredibly meaningful to me, and I'm so thankful to be a part of the work the Office is doing to seek justice in this case. I know the entire team is very grateful for everything the Office has done to support us from the very beginning.

All the best,

[REDACTED]

From: Strauss, Audrey (USANYS) <[REDACTED]>

Sent: Friday, July 10, 2020 9:18 AM

To: [REDACTED] >

Subject: Message from Audrey

From: [REDACTED]
To: [REDACTED]
Subject: RE: Epstein update
Date: Tue, 17 Sep 2019 20:30:38 +0000

Very helpful, thanks. Much appreciated. Keep me posted.

-----Original Message-----

From: [REDACTED]
Sent: Tuesday, September 17, 2019 4:29 PM
To: [REDACTED]
Subject: Epstein update

[REDACTED]
Maxwell's boyfriend, Scott Borgenson, lives in Manchester By the Sea, MA, we spoke with the PD and they were in contact with him earlier in August. Maxwell was with him but left after all the media scrutiny. The PD has a good relationship with him. We are tracking a cell phone we believe belongs to Maxwell, we just subpoena'd for subscriber info., I will keep you posted.

[REDACTED]
Crimes Against Children/Human Trafficking FBI New York
[REDACTED] office
[REDACTED] mobile

From: "[REDACTED]" <[REDACTED]>

To: "[REDACTED] (NY) (FBI)" <[REDACTED]>

Subject: RE: phone records

Date: Tue, 14 May 2019 22:13:53 +0000

Importance: Normal

Thanks! Last question: could you please let me know the provider for [REDACTED]? That's [REDACTED]

From: [REDACTED] (NY) (FBI) <[REDACTED]>

Sent: Tuesday, May 14, 2019 5:49 PM

To: [REDACTED] <[REDACTED]>; [REDACTED]

Cc: [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>

Subject: RE: phone records

They are the only providers listed.

-

On May 14, 2019 5:48 PM, "[REDACTED]" <[REDACTED]> wrote:

Thanks! Are these historical or current providers? Just checking.

From: [REDACTED] (NY) (FBI) <[REDACTED]>

Sent: Tuesday, May 14, 2019 5:14 PM

To: [REDACTED] <[REDACTED]>; [REDACTED] ([REDACTED]) <[REDACTED]>

Cc: [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>

Subject: RE: phone records

Hey all,

See below for providers.

- [T-Mobile](#) - [REDACTED] cell)
- [AT&T](#) - [REDACTED] - home)
- [Verizon](#) - [REDACTED] (Epstein's NY office)
- [AT&T](#) - [REDACTED] cell phone)

[REDACTED]
Special Agent
FBI New York
VCAC/Human Trafficking
[REDACTED]

From: [REDACTED] [[mailto:\[REDACTED\]](mailto:[REDACTED])]

Sent: Tuesday, May 14, 2019 3:26 PM

To: [REDACTED] ([REDACTED]) <[REDACTED]>; [REDACTED] (NY) (FBI) <[REDACTED]>

Cc: [REDACTED] <[REDACTED]>; [REDACTED]
<[REDACTED]>

Subject: phone records

Hi [REDACTED]

Could you please let us know the service providers for the following numbers (during the relevant time period)?
Thanks!

- [REDACTED] cell)
- [REDACTED] home)
- [REDACTED] (Epstein's NY office)
- [REDACTED] cell phone)

[REDACTED]
Assistant United States Attorney
Southern District of New York
One Saint Andrew's Plaza
New York, NY 10007

[REDACTED]

[REDACTED]

From: Alex Conlon <[REDACTED]>
To: "[REDACTED]" <[REDACTED]>
Cc: Alexandra Elenowitz-Hess <[REDACTED]>, "[REDACTED]" <[REDACTED]>
Subject: RE: SDNY investigation / interview
Date: Tue, 21 May 2019 20:07:12 +0000

Hi Alex,

I just tried to reach you at your desk, but missed you.

[REDACTED] is available to meet this week at 4:30 at our office if that works for you. Also, she plans to make the phone calls we discussed today and tomorrow on her own. She will contact me once she has connected with two individuals she's reaching out to and I will reach out to you in turn.

Happy to discuss anything, if that's helpful.

Thanks,
Alex

Alex Conlon | Kaplan Hecker & Fink LLP
350 Fifth Avenue | Suite 7110
New York, New York 10118
[REDACTED]

From: [REDACTED] <[REDACTED]>
Sent: Tuesday, May 14, 2019 4:49 PM
To: Alex Conlon <[REDACTED]>
Cc: Alexandra Elenowitz-Hess <[REDACTED]>; [REDACTED] <[REDACTED]>
Subject: RE: SDNY investigation / interview

Alex,

Just tried calling but missed you – wanted to briefly follow up on our conversation last week to let you know that we certainly don't have any objection to someone from your firm (whether attorney or staff) taking notes in connection with [REDACTED] conversations to tell the individuals we discussed that our office is interested in speaking with them. I expect we might request a copy of the notes, and, as discussed, whoever is with her would be a potential, theoretical witness, but no issue on our end with any of that.

Separately, if it's possible, could you please ask [REDACTED] if there is a time next week or the following that we could meet with her? We're hoping to cover all the information we need to in this first set of discussions before June, when I think it will be even more inconvenient for her to meet. I expect the next meeting will address difficult topics, including Giglio subjects and some review of Epstein's conduct with [REDACTED] in particular; but, I also expect that once we get through those issues, we won't need to meet with her again for at least a little while.

We can generally make ourselves available whenever works on her end, with some combination of our team (e.g., if it's the latter half of next week, will likely be me and our new team member [REDACTED] but let us know if there are any issues with that), and as always can work around her schedule. And happy to come to your office for the final push.

EFTA00039888

Don't hesitate to give a call if any other info would be helpful, or if any questions or issues, and thanks very much.

Alex.

[REDACTED]
Assistant U.S. Attorney
Southern District of New York
[REDACTED]

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From: "[REDACTED]" <[REDACTED]>
To: "[REDACTED]. (NY) (FBI)" <[REDACTED]>
Cc: "[REDACTED]" <[REDACTED]>

Subject: FW: RE: [REDACTED]

Date: Fri, 31 May 2019 14:13:27 +0000

Importance: Normal

Hi [REDACTED] —

Hope you had a good flight back. Any luck with the calls to [REDACTED]? In case you're looking for the email with contact info, it's below.

Thanks,

[REDACTED]

From: [REDACTED] <[REDACTED]>
Sent: Tuesday, May 14, 2019 12:11 PM
To: [REDACTED]. (NY) (FBI) <[REDACTED]>; [REDACTED] ([REDACTED]) <[REDACTED]>
Cc: [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>
Subject: RE: [REDACTED]

[REDACTED], [REDACTED],

After a lot of back and forth, we've gotten the best contact number for [REDACTED], which was one of the ones on your list — it's [REDACTED]. (It's our understanding that she's not currently represented, though of course if she wants to have counsel, as with everyone else, she can obtain an attorney or we can also assist in getting her appointed counsel. And also similarly, we can jump on a call with her to explain the basics too if that's helpful, but also happy to just have you guys make initial contact and then us meet her in person.)

So it's fine to call her, and she should know that we have an investigation and that we were planning to be in touch, though as always we're playing a game of telephone on our end so hard to know for sure. If you're able to make contact with her, I think it would make sense to explain what's happening generally but hopefully see if we can go out to California to meet with her sometime this month.

Quick background on her — [REDACTED]
[REDACTED]
[REDACTED] Epstein, who met her while she was in high school, but in reality she apparently was one of his victims. We don't believe she's ever been interviewed by law enforcement, and her name shows up in just one 302 — [REDACTED]
[REDACTED] states that Epstein bought [REDACTED] and that [REDACTED] was also a recruiter.

Happy to chat further if that's useful, otherwise green light to give her a call.

thanks,

[REDACTED]

[REDACTED]

Assistant U.S. Attorney
Southern District of New York

EFTA00039890

[REDACTED]

From: [REDACTED] (USANYS)" [REDACTED]

To: [REDACTED] (ODAG) (JMD)" [REDACTED]

Cc: [REDACTED] (USANYS)" [REDACTED]

Subject: Epstein

Date: Wed, 15 May 2019 15:20:46 +0000

Importance: Normal

Hello [REDACTED]

Hope you are well – do you have ten minutes to chat at some point in the next couple days? If so, let me know what might be a good time.

Best,

[REDACTED]
*Chief, Public Corruption Unit
United States Attorney's Office for the
Southern District of New York*

[REDACTED]

From: "[REDACTED] (USANYS)" <[REDACTED]>

To: [REDACTED]

Cc: [REDACTED]

Subject: Feds Are Asking Jeffrey Epstein's Victims About Sex-Trafficking Crimes

Date: Mon, 03 Jun 2019 15:28:51 +0000

Importance: Normal

FYI—no mention of our office...

<https://www.thedailybeast.com/feds-are-asking-jeffrey-epsteins-victims-about-sex-trafficking-crimes>

[REDACTED]
Public Affairs

U.S. Attorney's Office for the Southern District of New York

[REDACTED]
Website: www.justice.gov/usao-sdny

Facebook: <https://www.facebook.com/usaosdny>

Follow us on Twitter: [@SDNYnews](https://twitter.com/SDNYnews)

From: [REDACTED]

To: [REDACTED]

Subject: Issue with Declaration Filing

Date: Thu, 06 Aug 2020 11:42:36 +0000

Attachments: [REDACTED] - ECF_21.pdf;
[REDACTED] (with_exhibits) - ECF_22.pdf

[REDACTED],

I made an error filing your declaration yesterday--I initially filed it without the exhibits. I then re-filed it with the exhibits. The result is that there are two docket entries for your declaration in *Times v. BOP*, 20-cv-833. Both are attached here. I apologize for the mistake. If you think I should submit a letter to the Court explaining this, I'm happy to do so, or please let me know if you'd like to discuss.

(I would have raised this last night but my remote log in locked out about 10 minutes after I filed everything, and I just logged in again now.)

Thanks,

[REDACTED]

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

THE NEW YORK TIMES COMPANY,

Plaintiff,

v.

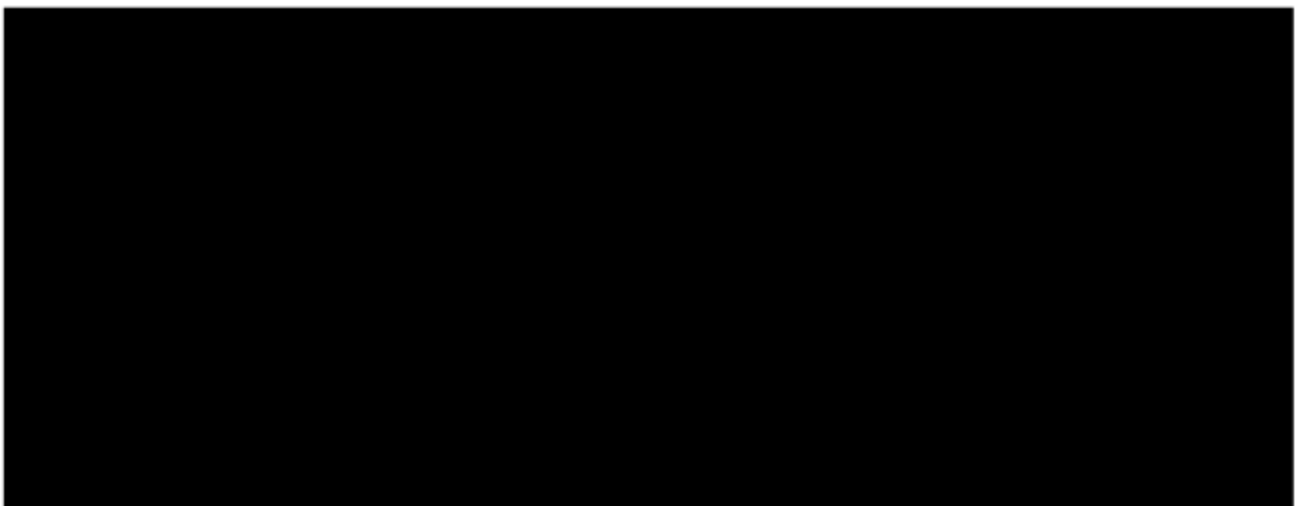
FEDERAL BUREAU OF PRISONS,

Defendant.

No. 20-CV-833(PAE)

DECLARATION OF RUSSELL CAPONE

I, [REDACTED], hereby declare as follows:



2. I am familiar with the Freedom of Information Act requests filed by the New York Times Company (the "FOIA Requests") that are the subject of this case, which seek records related to the incarceration of Jeffrey Epstein at the Metropolitan Correctional Center ("MCC"). I am also familiar with the responsive records that defendant the Federal Bureau of Prisons ("BOP") has withheld pursuant to exemptions 5, 6, 7(A), 7(C), 7(E), and 7(F) of FOIA, 5 U.S.C. § 552(b)(5)-(7). In addition, I am familiar with the proceedings in *United States of*

America v. Noel, 19-CR-830 (AT), and *United States of America v. Tartaglione*, 16-CR-832 (KMK). True and correct copies of the Indictment filed in *Noel* on November 19, 2019 (the “Noel Indictment”), and the Superseding Indictment filed in *Tartaglione* on April 16, 2019 (the “Tartaglione Indictment”), are attached hereto as Exhibits A and B, respectively. The statements contained in this declaration are based on my personal knowledge, documents maintained in the files of the USAO-SDNY, conversations with members of the *Noel* and *Tartaglione* prosecution teams at the USAO-SDNY, public court filings, and conclusions made in accordance therewith.

3. I submit this declaration in support of BOP’s motion for summary judgment in this case.

The Prosecution of Jeffrey Epstein

4. On July 2, 2019, Jeffrey Epstein was charged with one count of conspiracy to commit sex trafficking, in violation of 18 U.S.C. § 371, and one count of sex trafficking, in violation of 18 U.S.C. §§ 1591(a), (b)(2), and 2. On July 6, 2019, Epstein was arrested and thereafter incarcerated at the MCC until his death.

5. On July 10, 2019, Epstein was assigned to the Special Housing Unit (“SHU”) at the MCC due to, among other things, a risk of suicidality and safety concerns relating to housing him with the MCC’s general population. On July 18, 2019, a bond hearing as to Epstein was held before the Honorable Richard M. Berman, after which the Court granted the government’s motion for remand and denied Epstein’s motion for pretrial release. *See Noel Indictment* ¶ 10.

6. On July 23, 2019, MCC officers responded to an emergency call and found Epstein on the floor of his cell with a strip of bedsheet around his neck. *See Noel Indictment* ¶ 11. Michael Thomas, a correctional officer at the MCC and one of the defendants in the *Noel* case, was one of the MCC officials who responded to this incident. *See id.* Epstein was subsequently transferred out of the SHU, placed on suicide watch for 24 hours, and then

transferred to psychological observation, a different status in a different location within MCC's hospital ward, until July 30, 2019. On July 30, 2019, Epstein was transferred back to the SHU. *See id.* ¶¶ 11-13.

7. On August 10, 2019, Epstein was found in his cell, not responsive and with a noose around his neck. *See id.* ¶ 26. He was transferred to a local hospital where he was declared dead shortly thereafter. *See id.* ¶ 27. The Office of the Chief Medical Examiner of the City of New York conducted an autopsy and determined that Epstein had committed suicide by hanging himself. *See id.*

8. On August 29, 2019, following a public hearing on August 27, 2019, Judge Berman entered an order of *nolle prosequi* against Epstein. *See Nolle Prosequi*, Dkt. No. 52, *United States v. Epstein*, No. 19 Cr. 490 (RMB) (S.D.N.Y.).

The Prosecution of Tova Noel and Michael Thomas

9. As alleged in the Noel Indictment, Thomas and Tova Noel were correctional officers on duty at the SHU on August 9-10, 2019, the night of Epstein's death. *See Noel Indictment* ¶¶ 3-4. On that night, Noel and Thomas repeatedly failed to perform mandated counts of prisoners under their watch, including Epstein. To conceal this failure, they repeatedly signed false certifications attesting to having conducted multiple counts of inmates, when, in truth, they had not conducted such counts. *See id.* ¶¶ 15-24. On November 19, 2019, Noel and Thomas were charged in the Noel Indictment with one count of conspiring to defraud the United States and to make or use a false writing or document, in violation of Title 18, United States Code, Section 371; and five counts as to Noel and three counts as to Thomas of making or using a false writing or document, in violation of Title 18, United States Code, Sections 1001(a)(3) and (2). Noel Indictment ¶¶ 28-40. The *Noel* case is pending before the Honorable Analisa Torres. Trial has been scheduled to begin on January 4, 2021.

The Prosecution and Incarceration of Nicholas Tartaglione

10. In a superseding indictment filed on April 16, 2019, Nicholas Tartaglione was charged with one count of conspiracy to distribute narcotics, in violation of Title 21, United States Code, Section 846; four counts of intentional killing in furtherance of a drug trafficking crime, in violation of Title 21, United States Code, Section 848(e)(1)(A) and Title 18, United States Code, Section 2; three counts of murder through the use of a firearm in furtherance of a drug trafficking crime, in violation of Title 18, United States Code, Sections 924(j) and 2; one count of conspiracy to commit kidnapping, in violation of Title 18, United State Code, Section 1201; four counts of kidnapping resulting in death, in violation of Title 18, United States Code, Sections 1201(a)(1) and 2; and four counts of using a facility of interstate commerce to commit a crime of violence in violation of Title 18, United States Code, Sections 1952 and 2. These charges arise from the April 2016 murders of Martin Luna, Miguel Luna, Urbano Santiago, and Hector Gutierrez. On April 19, 2019, USAO-SDNY filed a Notice of Intent to Seek the Death Penalty against Tartaglione. The *Tartaglione* case is pending before the Honorable Kenneth M. Karas. No trial date has been set.

11. Tartaglione has been detained since he was arrested on December 19, 2016. For certain periods of his detention, including in July 2019, Tartaglione was housed at the MCC. In early July 2019, Tartaglione was transferred to the MCC's SHU. For a time, including on July 23, 2019, Tartaglione was housed in the same SHU cell as Jeffrey Epstein.

Records Withheld from Disclosure Pursuant to FOIA Exemption 7(A) on

Account of Likely Interference with *Noel*

12. 5 U.S.C. § 522 (b)(7)(A) ("Exemption 7(A)") exempts from disclosure "records or information compiled for law enforcement purposes, but only to the extent that the production

of such law enforcement records or information . . . could reasonably be expected to interfere with enforcement proceedings”

13. I and the prosecutors responsible for the *Noel* prosecution have reviewed each of the records responsive to the FOIA requests withheld in full or in part under Exemption 7(A), including those reflected on the index prepared by BOP and attached to the declaration of Kara Christenson (the “BOP index”). All of these records fall within the scope of Exemption 7(A).

14. Public disclosure of the records withheld under Exemption 7(A) could reasonably be expected to interfere with the pending prosecutions of Noel and Thomas. These records include information about which numerous witnesses are expected to testify at trial, include details that are not publicly known or known to other witnesses, and include information and documents authored by potential trial witnesses. These records also include potential trial exhibits, which some or all potential trial witnesses have not seen, and premature disclosure of those materials could influence witness testimony at trial, or enable witnesses to change or shape their testimony. Premature disclosure of these records and/or the information contained therein could reasonably be expected to influence witnesses’ potential testimony at trial and/or allow witnesses to alter their testimony to conform to other evidence.

15. Further, premature public disclosure of the records withheld under Exemption 7(A) could reasonably be expected to impair the government’s (and the defendants’) ability to seat a fair and impartial jury in *Noel*. The government anticipates that some of the records withheld under Exemption 7(A) will be entered into evidence as exhibits at trial, and other records that may not be trial exhibits bear on the contents of potential trial exhibits. Premature disclosure of these records, or the information contained therein, could influence potential jurors’ understanding of the evidence at trial and the case overall. Similarly, premature disclosure of the records could prejudice potential jurors for or against the defendants in the *Noel* action, which

would also impair the government's (and the defendants') ability to seat a fair and impartial jury. In addition, as noted above, these records include specific information about which witnesses are expected to testify at trial, as well as information and documents authored by potential trial witnesses, such that premature public disclosure could reasonably be expected to influence potential jurors' perception of the witnesses and the evidence to be presented at trial.

16. The risks of interference with the *Noel* proceedings are heightened by the media coverage of speculation and theories about Epstein's death. Many publicly-discussed theories of Epstein's death are unfounded. Premature release of the withheld records, particularly if the records are released in part or without full context, may influence the perception of jurors who have been exposed to such media coverage of speculation and theories.

Non-Email Records Withheld Pursuant to Exemption 7(A) on

Account of Likely Interference with Noel

17. The considerations discussed above apply to each of the categories of responsive non-email records withheld in full or in part by BOP under Exemption 7(A).

18. First, the government anticipates that MCC staffing records, including overtime logs and daily assignment rosters for the MCC on July 22, July 23 August 9, and 10, 2019 and some of the dates in between, will be the subject of witness testimony at the *Noel* trial. In addition, the government anticipates that some of these documents will be trial exhibits. Releasing these materials prematurely could reasonably be expected to influence witnesses' potential testimony at trial, allow witnesses to alter their testimony to conform to other evidence, or influence potential jurors' perceptions of witness testimony or evidence.

19. Second, the government anticipates that reports and memoranda prepared by BOP, such as the reports, memoranda, photographs, and evidence of Epstein's July 23, 2019 apparent suicide attempt; reports, memoranda, and letters concerning Epstein's August 10, 2019

suicide and surrounding events; documents in BOP's possession from the New York City Office of Chief Medical Examiner; and reports and letters concerning MCC's and BOP's response to Epstein's death, may be trial exhibits, the subject of witness testimony, or were prepared by witnesses who will testify at trial. Premature disclosure of these materials could reasonably be expected to influence witnesses' potential testimony at trial, allow witnesses to alter their testimony to conform to other evidence, or influence potential jurors' perceptions of witness testimony or evidence. Alternatively, if evidence of Epstein's July 23, 2019 suicide attempt or August 10, 2019 suicide and surrounding events is excluded from evidence at trial, pre-trial publication of these materials would risk exposing potential jurors for or against the defendants in the *Noel* action on the basis of material they would otherwise not be shown during trial, which would impair the government's (and the defendants') ability to seat a fair and impartial jury.

20. Third, the government anticipates that certain medical and psychological records of Epstein prepared by BOP may be trial exhibits, the subject of witness testimony, and/or were prepared by witnesses who will testify at trial. Premature disclosure of these records could influence the testimony of potential witnesses, including by potentially causing them to alter or confirm their testimony. In addition, premature disclosure of these records could reasonably be expected to prejudice potential jurors for or against the defendants in the *Noel* action, which would impair the government's (and the defendants') ability to seat a fair and impartial jury.

21. Fourth, the government anticipates that documents related to counts of inmates, including logs, count slips, and rosters, and other entries in BOP logs for August 9 and 10 may be trial exhibits, the subject of witness testimony, and/or were prepared by witnesses who will testify at trial. Premature disclosure of these materials could reasonably be expected to influence witnesses' potential testimony at trial, allow witnesses to alter their testimony to conform to other evidence, and/or influence potential jurors' perceptions of witness testimony or evidence.

22. Fifth, the government anticipates that an August 8, 2019, review of inmates in the SHU prepared by BOP may be a trial exhibit, the subject of witness testimony, and/or was prepared by witnesses who will testify at trial. Premature disclosure of this record could reasonably be expected to influence witnesses' potential testimony at trial and/or allow witnesses to alter their testimony to conform to other evidence.

Email Records Withheld Pursuant to Exemption 7(A) on

Account of Likely Interference with Noel

23. The considerations discussed above also apply to each of the categories of responsive email documents withheld in full or in part by BOP under Exemption 7(A).

24. First, emails pertaining to Epstein's July 23, 2019 apparent suicide attempt, his incarceration prior to his suicide, and his mental health, including emails written by BOP's Psychology Services, discuss topics and information that the government anticipates may be the subject of witness testimony at the *Noel* trial. Their disclosure could influence witness testimony, including by allowing witnesses to alter their testimony to conform to other evidence, or influence potential jurors' perceptions of witness testimony or evidence. Alternatively, as described above, if evidence of Epstein's July 23, 2019 suicide attempt or is excluded from evidence at trial, pre-trial publication of these materials would risk exposing potential jurors for or against the defendants in the *Noel* action on the basis of material they would otherwise not be shown during trial, which would impair the government's (and the defendants') ability to seat a fair and impartial jury.

25. Second, emails relating to Epstein's death, investigations into Epstein's death, the circumstances of his suicide, and the BOP's response to Epstein's death discuss topics and information that the government anticipates will be relevant to and/or the subject of witness testimony at the *Noel* trial. Their disclosure could influence witness testimony, including by

allowing witnesses to alter their testimony to conform to other evidence, or influence potential jurors' perceptions of witness testimony or evidence. Alternatively, as described above, if evidence of Epstein's suicide is excluded from evidence at trial, pre-trial publication of these materials would risk exposing potential jurors for or against the defendants in the *Noel* action on the basis of material they would otherwise not be shown during trial, which would impair the government's (and the defendants') ability to seat a fair and impartial jury.

26. Providing more detailed public descriptions of the withheld documents and how their release would interfere with the *Noel* prosecution would itself risk interfering with the *Noel* prosecution. For example, public disclosure of more detailed descriptions of the documents anticipated to be proffered as exhibits at trial, or that bear on other trial exhibits, would disclose elements of the Government's trial strategy in *Noel*, including its selection of trial exhibits and the anticipated content of witness testimony. More detailed public descriptions could also prematurely disclose how the prosecution team expects the trial to proceed.

Records Withheld Pursuant to Exemption 7(A) on
Account of Likely Interference With Tartaglione

27. In the course of reviewing the responsive records that BOP has withheld pursuant to Exemption 7(A), prosecutors in the Criminal Division of the USAO-SDNY determined that certain of the records refer to or discuss Tartaglione (the "Tartaglione Records"). Upon determining that some of the records withheld by BOP refer to or discuss Tartaglione, USAO-SDNY reviewed these records to determine whether their release would interfere with the pending criminal action against Tartaglione. USAO-SDNY has concluded that release of certain of the withheld records could reasonably be expected to interfere with the prosecution of Tartaglione. This constitutes a basis to withhold these records under Exemption 7(A), independent from the likely interference with the *Noel* prosecution discussed above.

28. The Tartaglione Records fall within several categories of responsive documents withheld by BOP and include reports and evidence of Epstein's July 23, 2019 apparent suicide attempt; reports and evidence of Epstein's death on August 10, 2019; email correspondence between Tartaglione's attorneys and legal counsel at the MCC; and medical and psychological records of Epstein prepared by BOP. The Tartaglione Records also include emails pertaining to Epstein's July 23, 2019 apparent suicide attempt, Epstein's mental and physical health, and Epstein's incarceration prior to his suicide.

29. The Tartaglione Records fall within the scope of 7(A) because their disclosure could reasonably be expected to interfere with the prosecution of Tartaglione. The Tartaglione Records contain, among other things, information about Tartaglione's incarceration, including the period of time during which Tartaglione was Epstein's cellmate at the MCC, which includes the date of Epstein's apparent suicide attempt on July 23, 2019. The conditions of Tartaglione's confinement at the MCC, as well as his interactions with Epstein in July 2019, have been put directly at issue by Tartaglione's defense counsel, specifically in connection with the potential penalty phase of the case against Tartaglione. *See* Letter dated January 13, 2010, Dkt. No. 186, *United States v. Tartaglione*, No. 16 Cr. 832 (KMK); Letter dated January 21, 2020, Dkt. No. 193, *United States v. Tartaglione*, No. 16 Cr. 832 (KMK). In light of defense counsel's position, information contained in the Tartaglione Records may be relevant evidence in any possible penalty phase of the case against Tartaglione, and as a result, premature public disclosure of the Tartaglione Records could reasonably be expected to influence witness testimony and/or potential jurors' perceptions of witness testimony or evidence.

30. Moreover, the nature of the charges against Epstein and the circumstances of his apparent suicide attempt and death create a risk that premature public disclosure of the Tartaglione Records could reasonably be expected to impair the government's (and the

defendants') ability to seat a fair and impartial jury in *Tartaglione*, particularly for purposes of a potential penalty-phase hearing required by 18 U.S.C. § 3593, by influencing potential juror perceptions of any interactions between Epstein and Tartaglione.

31. The risks of interference with the *Tartaglione* proceedings are heightened by the media coverage of speculation and theories about Epstein's death. As noted previously, many publicly-discussed theories of Epstein's death are unfounded. The public dissemination of these theories increases the risk that premature release of the Tartaglione Records could influence witness testimony or jurors' perceptions, if records are released in part or without full context.

32. The Tartaglione Records include several categories of records withheld by BOP. Specifically, the government anticipates that premature disclosure of the reports and evidence of Epstein's July 23, 2019 apparent suicide attempt; an inmate investigative report prepared prior to Epstein's death; reports and evidence of Epstein's death on August 10, 2019; email correspondence between Tartaglione's attorneys and legal counsel at the MCC; the August 8, 2019 review of inmates in the SHU at MCC; and the medical and psychological records of Epstein prepared by BOP, including documents pertaining to his mental health, could reasonably be expected to adversely affect the *Tartaglione* proceedings and influence potential jurors' perceptions of Tartaglione, thereby impairing the district court's ability to seat a fair and impartial jury. In addition, emails pertaining to Epstein's July 23, 2019 apparent suicide attempt, Epstein's mental health, and Epstein's incarceration prior to his suicide, including emails that involve members of the defense or prosecution teams in *Tartaglione*, discuss topics and information that could adversely affect the *Tartaglione* proceedings and influence potential juror's perceptions of Tartaglione. These records likewise could reasonably be expected to impair the district court's ability to seat a fair and impartial jury.

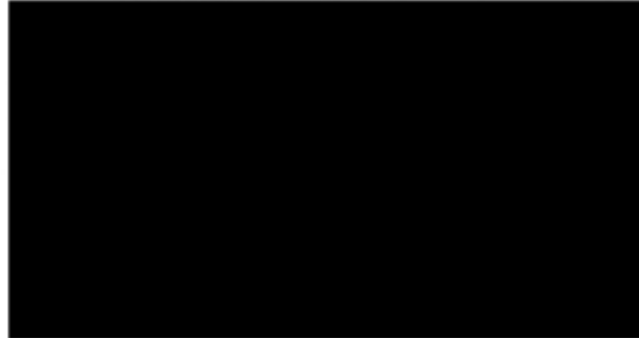
33. Providing more detailed public descriptions of the withheld documents and how their release would affect the *Tartaglione* prosecution would itself risk interfering with the *Tartaglione* prosecution. For example, public disclosure of more detailed descriptions would potentially implicate and publicize associations, interactions, or perceptions of associations or interactions between Tartaglione and Epstein, thereby risking influencing potential jurors in proceedings against Tartaglione, including for any sentencing hearing required by 18 U.S.C. § 3593.

Segregability

34. The records withheld in full under Exemption 7(A) are exempt from disclosure in their entirety under Exemption 7(A). To the extent the records contain any non-exempt information, such information is inextricably intertwined with information that could reasonably be expected to interfere with the *Noel* and/or *Tartaglione* prosecutions for the reasons discussed above. The media coverage of speculation and theories about Epstein's death makes the segregation of any possibly non-exempt information particularly difficult because providing information pertaining to Epstein (or Tartaglione and Epstein) without complete context can reasonably be expected to contribute to the dissemination of speculation and theories about his death. This, in turn, could reasonably be expected to interfere with the district court's ability to seat a fair and impartial jury in proceedings against Noel, Thomas, and/or Tartaglione, including for any sentencing hearing required by 18 U.S.C. § 3593, for the reasons discussed above.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 5 day of August 2020.



**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

THE NEW YORK TIMES COMPANY,

Plaintiff,

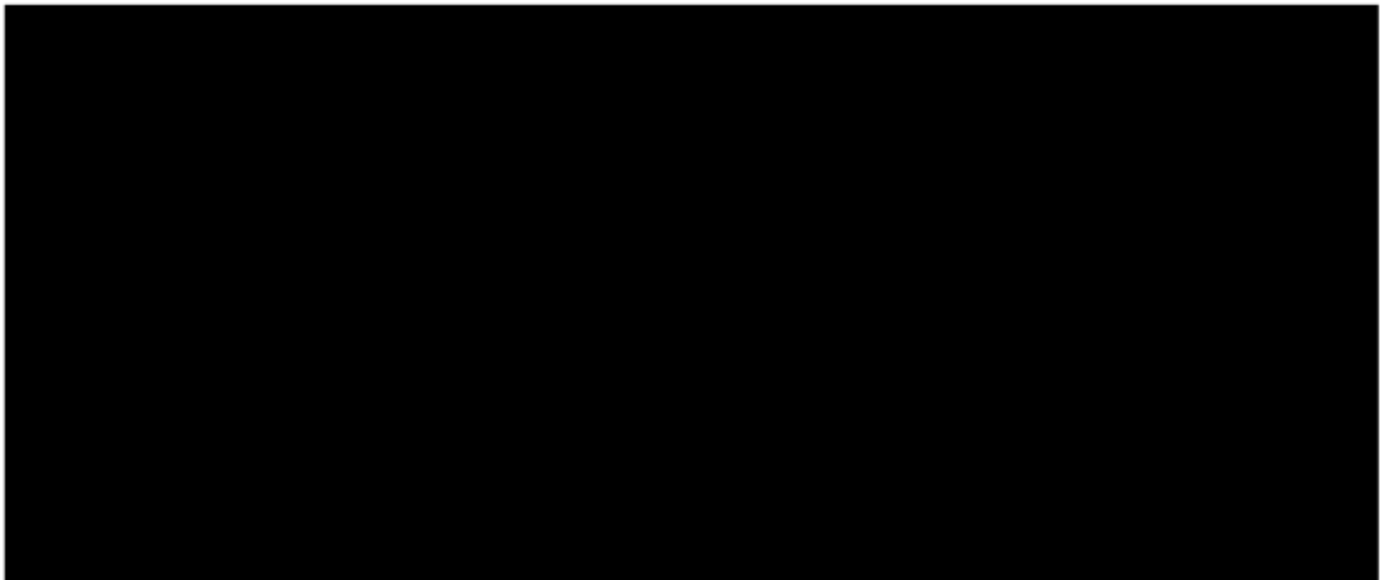
v.

FEDERAL BUREAU OF PRISONS,

Defendant.

No. 20-CV-833(PAE)

DECLARATION OF RUSSELL CAPONE



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15. Further, premature public disclosure of the records withheld under Exemption 7(A) could reasonably be expected to impair the government’s (and the defendants’) ability to seat a fair and impartial jury in *Noel*. The government anticipates that some of the records withheld under Exemption 7(A) will be entered into evidence as exhibits at trial, and other records that may not be trial exhibits bear on the contents of potential trial exhibits. Premature disclosure of these records, or the information contained therein, could influence potential jurors’ understanding of the evidence at trial and the case overall. Similarly, premature disclosure of the records could prejudice potential jurors for or against the defendants in the *Noel* action, which

would also impair the government's (and the defendants') ability to seat a fair and impartial jury. In addition, as noted above, these records include specific information about which witnesses are expected to testify at trial, as well as information and documents authored by potential trial witnesses, such that premature public disclosure could reasonably be expected to influence potential jurors' perception of the witnesses and the evidence to be presented at trial.

16. The risks of interference with the *Noel* proceedings are heightened by the media coverage of speculation and theories about Epstein's death. Many publicly-discussed theories of Epstein's death are unfounded. Premature release of the withheld records, particularly if the records are released in part or without full context, may influence the perception of jurors who have been exposed to such media coverage of speculation and theories.

Non-Email Records Withheld Pursuant to Exemption 7(A) on

Account of Likely Interference with Noel

17. The considerations discussed above apply to each of the categories of responsive non-email records withheld in full or in part by BOP under Exemption 7(A).

18. First, the government anticipates that MCC staffing records, including overtime logs and daily assignment rosters for the MCC on July 22, July 23 August 9, and 10, 2019 and some of the dates in between, will be the subject of witness testimony at the *Noel* trial. In addition, the government anticipates that some of these documents will be trial exhibits. Releasing these materials prematurely could reasonably be expected to influence witnesses' potential testimony at trial, allow witnesses to alter their testimony to conform to other evidence, or influence potential jurors' perceptions of witness testimony or evidence.

19. Second, the government anticipates that reports and memoranda prepared by BOP, such as the reports, memoranda, photographs, and evidence of Epstein's July 23, 2019 apparent suicide attempt; reports, memoranda, and letters concerning Epstein's August 10, 2019

suicide and surrounding events; documents in BOP's possession from the New York City Office of Chief Medical Examiner; and reports and letters concerning MCC's and BOP's response to Epstein's death, may be trial exhibits, the subject of witness testimony, or were prepared by witnesses who will testify at trial. Premature disclosure of these materials could reasonably be expected to influence witnesses' potential testimony at trial, allow witnesses to alter their testimony to conform to other evidence, or influence potential jurors' perceptions of witness testimony or evidence. Alternatively, if evidence of Epstein's July 23, 2019 suicide attempt or August 10, 2019 suicide and surrounding events is excluded from evidence at trial, pre-trial publication of these materials would risk exposing potential jurors for or against the defendants in the *Noel* action on the basis of material they would otherwise not be shown during trial, which would impair the government's (and the defendants') ability to seat a fair and impartial jury.

20. Third, the government anticipates that certain medical and psychological records of Epstein prepared by BOP may be trial exhibits, the subject of witness testimony, and/or were prepared by witnesses who will testify at trial. Premature disclosure of these records could influence the testimony of potential witnesses, including by potentially causing them to alter or confirm their testimony. In addition, premature disclosure of these records could reasonably be expected to prejudice potential jurors for or against the defendants in the *Noel* action, which would impair the government's (and the defendants') ability to seat a fair and impartial jury.

21. Fourth, the government anticipates that documents related to counts of inmates, including logs, count slips, and rosters, and other entries in BOP logs for August 9 and 10 may be trial exhibits, the subject of witness testimony, and/or were prepared by witnesses who will testify at trial. Premature disclosure of these materials could reasonably be expected to influence witnesses' potential testimony at trial, allow witnesses to alter their testimony to conform to other evidence, and/or influence potential jurors' perceptions of witness testimony or evidence.

22. Fifth, the government anticipates that an August 8, 2019, review of inmates in the SHU prepared by BOP may be a trial exhibit, the subject of witness testimony, and/or was prepared by witnesses who will testify at trial. Premature disclosure of this record could reasonably be expected to influence witnesses' potential testimony at trial and/or allow witnesses to alter their testimony to conform to other evidence.

Email Records Withheld Pursuant to Exemption 7(A) on

Account of Likely Interference with Noel

23. The considerations discussed above also apply to each of the categories of responsive email documents withheld in full or in part by BOP under Exemption 7(A).

24. First, emails pertaining to Epstein's July 23, 2019 apparent suicide attempt, his incarceration prior to his suicide, and his mental health, including emails written by BOP's Psychology Services, discuss topics and information that the government anticipates may be the subject of witness testimony at the *Noel* trial. Their disclosure could influence witness testimony, including by allowing witnesses to alter their testimony to conform to other evidence, or influence potential jurors' perceptions of witness testimony or evidence. Alternatively, as described above, if evidence of Epstein's July 23, 2019 suicide attempt or is excluded from evidence at trial, pre-trial publication of these materials would risk exposing potential jurors for or against the defendants in the *Noel* action on the basis of material they would otherwise not be shown during trial, which would impair the government's (and the defendants') ability to seat a fair and impartial jury.

25. Second, emails relating to Epstein's death, investigations into Epstein's death, the circumstances of his suicide, and the BOP's response to Epstein's death discuss topics and information that the government anticipates will be relevant to and/or the subject of witness testimony at the *Noel* trial. Their disclosure could influence witness testimony, including by

allowing witnesses to alter their testimony to conform to other evidence, or influence potential jurors' perceptions of witness testimony or evidence. Alternatively, as described above, if evidence of Epstein's suicide is excluded from evidence at trial, pre-trial publication of these materials would risk exposing potential jurors for or against the defendants in the *Noel* action on the basis of material they would otherwise not be shown during trial, which would impair the government's (and the defendants') ability to seat a fair and impartial jury.

26. Providing more detailed public descriptions of the withheld documents and how their release would interfere with the *Noel* prosecution would itself risk interfering with the *Noel* prosecution. For example, public disclosure of more detailed descriptions of the documents anticipated to be proffered as exhibits at trial, or that bear on other trial exhibits, would disclose elements of the Government's trial strategy in *Noel*, including its selection of trial exhibits and the anticipated content of witness testimony. More detailed public descriptions could also prematurely disclose how the prosecution team expects the trial to proceed.

Records Withheld Pursuant to Exemption 7(A) on
Account of Likely Interference With Tartaglione

27. In the course of reviewing the responsive records that BOP has withheld pursuant to Exemption 7(A), prosecutors in the Criminal Division of the USAO-SDNY determined that certain of the records refer to or discuss Tartaglione (the "Tartaglione Records"). Upon determining that some of the records withheld by BOP refer to or discuss Tartaglione, USAO-SDNY reviewed these records to determine whether their release would interfere with the pending criminal action against Tartaglione. USAO-SDNY has concluded that release of certain of the withheld records could reasonably be expected to interfere with the prosecution of Tartaglione. This constitutes a basis to withhold these records under Exemption 7(A), independent from the likely interference with the *Noel* prosecution discussed above.

28. The Tartaglione Records fall within several categories of responsive documents withheld by BOP and include reports and evidence of Epstein's July 23, 2019 apparent suicide attempt; reports and evidence of Epstein's death on August 10, 2019; email correspondence between Tartaglione's attorneys and legal counsel at the MCC; and medical and psychological records of Epstein prepared by BOP. The Tartaglione Records also include emails pertaining to Epstein's July 23, 2019 apparent suicide attempt, Epstein's mental and physical health, and Epstein's incarceration prior to his suicide.

29. The Tartaglione Records fall within the scope of 7(A) because their disclosure could reasonably be expected to interfere with the prosecution of Tartaglione. The Tartaglione Records contain, among other things, information about Tartaglione's incarceration, including the period of time during which Tartaglione was Epstein's cellmate at the MCC, which includes the date of Epstein's apparent suicide attempt on July 23, 2019. The conditions of Tartaglione's confinement at the MCC, as well as his interactions with Epstein in July 2019, have been put directly at issue by Tartaglione's defense counsel, specifically in connection with the potential penalty phase of the case against Tartaglione. *See* Letter dated January 13, 2010, Dkt. No. 186, *United States v. Tartaglione*, No. 16 Cr. 832 (KMK); Letter dated January 21, 2020, Dkt. No. 193, *United States v. Tartaglione*, No. 16 Cr. 832 (KMK). In light of defense counsel's position, information contained in the Tartaglione Records may be relevant evidence in any possible penalty phase of the case against Tartaglione, and as a result, premature public disclosure of the Tartaglione Records could reasonably be expected to influence witness testimony and/or potential jurors' perceptions of witness testimony or evidence.

30. Moreover, the nature of the charges against Epstein and the circumstances of his apparent suicide attempt and death create a risk that premature public disclosure of the Tartaglione Records could reasonably be expected to impair the government's (and the

defendants') ability to seat a fair and impartial jury in *Tartaglione*, particularly for purposes of a potential penalty-phase hearing required by 18 U.S.C. § 3593, by influencing potential juror perceptions of any interactions between Epstein and Tartaglione.

31. The risks of interference with the *Tartaglione* proceedings are heightened by the media coverage of speculation and theories about Epstein's death. As noted previously, many publicly-discussed theories of Epstein's death are unfounded. The public dissemination of these theories increases the risk that premature release of the Tartaglione Records could influence witness testimony or jurors' perceptions, if records are released in part or without full context.

32. The Tartaglione Records include several categories of records withheld by BOP. Specifically, the government anticipates that premature disclosure of the reports and evidence of Epstein's July 23, 2019 apparent suicide attempt; an inmate investigative report prepared prior to Epstein's death; reports and evidence of Epstein's death on August 10, 2019; email correspondence between Tartaglione's attorneys and legal counsel at the MCC; the August 8, 2019 review of inmates in the SHU at MCC; and the medical and psychological records of Epstein prepared by BOP, including documents pertaining to his mental health, could reasonably be expected to adversely affect the *Tartaglione* proceedings and influence potential jurors' perceptions of Tartaglione, thereby impairing the district court's ability to seat a fair and impartial jury. In addition, emails pertaining to Epstein's July 23, 2019 apparent suicide attempt, Epstein's mental health, and Epstein's incarceration prior to his suicide, including emails that involve members of the defense or prosecution teams in *Tartaglione*, discuss topics and information that could adversely affect the *Tartaglione* proceedings and influence potential juror's perceptions of Tartaglione. These records likewise could reasonably be expected to impair the district court's ability to seat a fair and impartial jury.

33. Providing more detailed public descriptions of the withheld documents and how their release would affect the *Tartaglione* prosecution would itself risk interfering with the *Tartaglione* prosecution. For example, public disclosure of more detailed descriptions would potentially implicate and publicize associations, interactions, or perceptions of associations or interactions between Tartaglione and Epstein, thereby risking influencing potential jurors in proceedings against Tartaglione, including for any sentencing hearing required by 18 U.S.C. § 3593.

Segregability

34. The records withheld in full under Exemption 7(A) are exempt from disclosure in their entirety under Exemption 7(A). To the extent the records contain any non-exempt information, such information is inextricably intertwined with information that could reasonably be expected to interfere with the *Noel* and/or *Tartaglione* prosecutions for the reasons discussed above. The media coverage of speculation and theories about Epstein's death makes the segregation of any possibly non-exempt information particularly difficult because providing information pertaining to Epstein (or Tartaglione and Epstein) without complete context can reasonably be expected to contribute to the dissemination of speculation and theories about his death. This, in turn, could reasonably be expected to interfere with the district court's ability to seat a fair and impartial jury in proceedings against Noel, Thomas, and/or Tartaglione, including for any sentencing hearing required by 18 U.S.C. § 3593, for the reasons discussed above.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 5 day of August 2020.

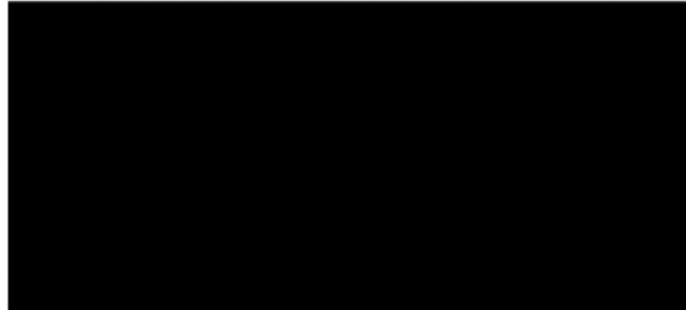


Exhibit A

JUDGE TORRES**ORIGINAL**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA :

- v. - :

TOVA NOEL and
MICHAEL THOMAS, :

Defendants. :

----- X

INDICTMENT19 Cr
19 CRIM 830INTRODUCTION

1. On or about August 10, 2019, TOVA NOEL and MICHAEL THOMAS, the defendants, in dereliction of their duties as correctional officers at the Metropolitan Correctional Center ("MCC"), repeatedly failed to perform mandated counts of prisoners under their watch in the MCC's Special Housing Unit ("SHU"). Instead, for substantial portions of their shifts, NOEL and THOMAS sat at their desk, browsed the internet, and moved around the common area of the SHU. To conceal their failure to perform their duties, NOEL and THOMAS repeatedly signed false certifications attesting to having conducted multiple counts of inmates when, in truth and in fact, they never conducted such counts. As a result of those false statements, the MCC believed prisoners in the SHU were being regularly monitored and accounted for when, in fact, as a result of the defendants' conduct, no correctional officer conducted any count or round of the SHU from approximately 10:30

p.m. on August 9 until approximately 6:30 a.m. on August 10, at which time, as alleged herein, NOEL and THOMAS discovered the body of an MCC inmate, Jeffrey Epstein, who had committed suicide overnight while unobserved.

RELEVANT INDIVIDUALS AND ENTITIES

2. The MCC is a federal administrative detention facility located in Manhattan that is run by the Federal Bureau of Prisons ("BOP"). The MCC is one of several facilities used to house inmates who have been charged with federal crimes in the Southern District of New York and are awaiting trial. The MCC employs correctional officers, whose primary duty is to ensure the care, custody, and control of the inmate population of the MCC.

3. TOVA NOEL, the defendant, has been employed as a correctional officer at the MCC since approximately 2016. As of August 2019, NOEL's primary assignment was the SHU. On August 9, 2019, NOEL worked a regular shift from 4 p.m. to 12 a.m. in the SHU, and then worked an overtime shift from 12 a.m. to 8 a.m. on August 10, 2019, also in the SHU. NOEL had also worked a regular shift in the SHU the day before, August 8, 2019, from 12 p.m. to 8 p.m.

4. MICHAEL THOMAS, the defendant, has been employed as a correctional officer at the MCC since approximately 2007. Beginning in approximately 2013, THOMAS was assigned to work as a

materials handler supervisor, although THOMAS regularly worked overtime shifts as a correctional officer, including in the SHU. THOMAS worked an overtime shift in the SHU on August 10, 2019, from 12 a.m. to 8 a.m. THOMAS did not work his regular shift on August 8 or August 9, 2019, but did work an overtime shift in the SHU on August 9, 2019 from 12 a.m. to 8 a.m.

5. As detailed herein, Jeffrey Epstein was incarcerated at the MCC between his arrest on July 6, 2019, and his suicide on August 10, 2019. Epstein was detained pending trial in the Southern District of New York on sex trafficking charges.

THE MCC AND INSTITUTIONAL COUNTS

6. The MCC, which houses approximately 750 inmates at any given time, assigns inmates to various housing units within the MCC. The SHU is a housing unit within the MCC where inmates are securely separated from the general inmate population to ensure their own safety as well as the safety of staff and other inmates. The SHU is located on the ninth floor of the MCC, and access to that floor is controlled by a locked door that can be opened remotely only by an officer in the MCC's centralized control center (the "Control Center"), which is located on the first floor of the MCC. Access into the SHU is also controlled by a second locked door to which only correctional officers assigned to the SHU have

keys while on duty. Within the SHU, inmates are assigned to six separate tiers, each of which can be accessed only via a single locked door to which the correctional officers assigned to the SHU have keys while on duty. Each tier has eight cells, each of which can house either one or two prisoners, and each individual cell - which is made of cement and metal - is accessed only through a single locked door, to which only correctional officers assigned to the SHU have keys while on duty.

7. The BOP requires correctional officers assigned to guard inmates at the MCC to conduct institution-wide counts of inmates at regular, scheduled intervals to ensure that each inmate is alive and accounted for within the MCC (the "institutional count"). On weekdays, the MCC conducts five institutional counts at 4 p.m., 10 p.m., 12 a.m., 3 a.m., and 5 a.m. Performing an institutional count is one of the most basic and essential aspects of a correctional officer's job, and the count is one of the most basic and essential functions of daily operation of the MCC. Two officers are required to perform the institutional count for each housing unit, including the SHU, and are further required to document their performance of the count on an official MCC form called a count slip. To perform the institutional count in the SHU, two officers must walk from tier to tier to observe and count each individual inmate.

8. On the count slip, both correctional officers are required to fill in the date and time the count was performed, write the total number of inmates physically present in the unit counted, and then sign the count slip. Once the correctional officers have completed and signed the count slips, the count slips are then collected and delivered to the Control Center, where officers within the Control Center are responsible for comparing the count slips from each housing unit to the institution's inmate roster to ensure that each inmate is accounted for. Only after all the count slips are collected from each housing unit, and the numbers on the slips are matched to the institution's inmate roster, can the institutional count be deemed "cleared" or completed. If a housing unit's count slip is incorrect or incomplete, then the institution cannot "clear" the count. Instead, the count must be completely redone in that housing unit via a more-intensive version of the institutional count called a "bed book count," in which officers must compare every individual inmate to the institution's inmate roster. Records of each institutional count, including the count slips, are provided to a supervising official and retained by the MCC.

9. In addition to the institutional count, the BOP requires correctional officers assigned to the SHU to walk each of the tiers of the SHU - which is called a "round" - every thirty

minutes ("30-minute rounds"). Like the institutional counts, correctional officers conduct 30-minute rounds to ensure that each inmate is alive and accounted for within his cell. Correctional officers working in the SHU are required to complete a form, which is reviewed and signed by their supervisor, documenting the date and time of each 30-minute round in each tier of the SHU.

EPSTEIN'S PRIOR APPARENT SUICIDE ATTEMPT

10. On July 6, 2019, inmate Jeffrey Epstein was arrested and detained at the MCC on sex trafficking charges. On July 10, 2019, Epstein was assigned to the SHU due to, among other things, risk factors for suicidality and safety concerns relating to housing him with the MCC's general population.

11. On July 23, 2019, while Epstein was housed in the SHU, MCC officers responded to an emergency call, and found Epstein on the floor of his cell with a strip of bedsheet around his neck. MICHAEL THOMAS, the defendant, was one of the MCC officers who responded to the incident. Epstein was subsequently transferred out of the SHU and was placed on suicide watch. Inmates placed on suicide watch are housed in a cell on the hospital wing floor of the MCC, and are watched twenty-four hours a day by a staff member or a specially trained inmate companion.

12. Epstein remained on suicide watch for approximately twenty-four hours, and then was transferred to psychological

observation, until July 30, 2019. Psychological observation is less restrictive than suicide watch, but inmates are still housed in the hospital wing of the MCC and watched twenty-four hours a day.

13. On July 30, 2019, Epstein was transferred back to the SHU, and, at the direction of the MCC's psychological staff, was required to have an assigned cellmate. Epstein was also assigned to the cell closest to the correctional officers' desk in the common area of the SHU, which was approximately fifteen feet from the cell. Conducting the required institutional counts and thirty-minute rounds in the SHU were also part of the MCC's procedures for ensuring the safety of inmates, including Epstein.

EVENTS OF AUGUST 9-10, 2019

14. On August 9, 2019, Epstein's cellmate was transferred out of the MCC in a routine, pre-arranged transfer at approximately 8 a.m. Despite the MCC's psychological staff's direction that Epstein have a cellmate, no new cellmate was assigned to Epstein's cell.

15. TOVA NOEL, the defendant, was one of the assigned officers on duty in the SHU from 4 p.m. on August 9, 2019 to 8 a.m. on August 10. From 4 p.m. to 12 a.m., two other officers were on duty with NOEL in the SHU: one officer was assigned to work from 2 p.m. to 10 p.m. ("Officer-1"), and one officer was

assigned to work from 4 p.m. to 12 a.m. ("Officer-2"). MICHAEL THOMAS, the defendant, started his shift in the SHU at 12 a.m. on August 10. From 12 a.m. until 8 a.m. on August 10, NOEL and THOMAS were the only two officers on duty in the SHU.

16. During the time period from 4 p.m. on August 9 to 8 a.m. on August 10, the officers on duty in the SHU, including TOVA NOEL and MICHAEL THOMAS, the defendants, were responsible for conducting five institutional counts: 4 p.m. and 10 p.m. on August 9; and 12 a.m., 3 a.m., and 5 a.m. on August 10. NOEL, THOMAS and the other officers on duty were also responsible for completing paperwork attesting to each of those counts. While, as detailed herein, count slips were completed for each institutional count, in fact, not a single one of those institutional counts was done.

17. TOVA NOEL, the defendant, and Officer-1 were responsible for conducting the 4 p.m. institutional count in the SHU. As video from the MCC's internal video surveillance system makes clear, NOEL and Officer-1 did not perform the 4 p.m. count. Nonetheless, NOEL and Officer-1 completed and signed a count slip that falsely stated that the 4 p.m. institutional count had been performed. In reliance on that falsified count slip, at approximately 5:03 p.m., the Control Center cleared the 4 p.m. count.

18. That evening, Epstein returned to the SHU from his attorney visit and was escorted into his cell by TOVA NOEL, the defendant, and another officer at approximately 7:49 p.m. NOEL and the other officer left the tier in which Epstein was housed immediately thereafter.

19. By or before 10 p.m., all inmates in the MCC were locked in their cells for the night. At or around that time, TOVA NOEL, the defendant, and Officer-2 were responsible for conducting the 10 p.m. institutional count in the SHU. However, video from the MCC's internal video surveillance system shows that NOEL and Officer-2 did not perform the 10 p.m. count. Nonetheless, NOEL and Officer-2 completed and signed a count slip falsely stating that the 10 p.m. institutional count had been performed. In reliance on that falsified count slip, at approximately 10:36 p.m., the Control Center cleared the 10 p.m. count.

20. As reflected on video obtained from the MCC's internal video surveillance system, at approximately 10:30 p.m. on August 9, 2019 - after TOVA NOEL, the defendant, had signed and submitted the 10 p.m. count slip and the institutional count had been completed - NOEL briefly walked up to, and then walked back from, the door to the tier in which Epstein was housed. As confirmed by the video obtained from the MCC's internal video surveillance system, this was the last time anyone, including any

correctional officer, walked up to, let alone entered, the only entrance to the tier in which Epstein was housed until approximately 6:30 a.m. on August 10.

21. Officer-1's shift ended at approximately 10 p.m., and at approximately 12 a.m., MICHAEL THOMAS, the defendant, replaced Officer-2, joining TOVA NOEL, the defendant, as the only two correctional officers on duty in the SHU. NOEL and THOMAS were responsible for conducting the 12 a.m. institutional count in the SHU. As confirmed by video from the MCC's internal video surveillance system, NOEL and THOMAS did not perform the 12 a.m. count. Nonetheless, NOEL and THOMAS completed and signed a count slip for the 12 a.m. count that falsely stated that the institutional count had been performed. In reliance on that falsified count slip, at approximately 12:49 a.m., the Control Center cleared the 12 a.m. count.

22. TOVA NOEL and MICHAEL THOMAS, the defendants, were additionally responsible for conducting the 3 a.m. and 5 a.m. institutional counts in the SHU. As confirmed by video from the MCC's internal video surveillance system, NOEL and THOMAS did not perform either the 3 a.m. or the 5 a.m. counts. NOEL and THOMAS nonetheless completed and signed count slips for both counts that falsely stated that they had performed the 3 a.m. and 5 a.m. institutional counts. In reliance on those falsified count slips,

at approximately 3:24 a.m. and 5:30 a.m., the Control Center cleared the 3 a.m. and 5 a.m. counts, respectively.

23. Moreover, despite the requirement that officers on duty in the SHU conduct and document regular, 30-minute rounds, TOVA NOEL and MICHAEL THOMAS, the defendants, did not perform any of the required 30-minute rounds during their shift between approximately 12 a.m. and 6:30 a.m. Nonetheless, NOEL completed and signed more than 75 separate 30-minute round entries falsely affirming that they had, in fact, conducted such rounds.

24. During the night, instead of completing the required counts and rounds, TOVA NOEL and MICHAEL THOMAS, the defendants, were seated at the correctional officers' desk in the SHU common area (as noted above, approximately 15 feet from Epstein's cell), used the computers, and moved around the SHU common area. For a period of approximately two hours, NOEL and THOMAS sat at their desk without moving, and appeared to have been asleep. NOEL used the computer periodically throughout the night, including to search the internet for furniture sales and benefit websites. THOMAS used the computer briefly around 1 a.m., 4 a.m., and 6 a.m. to search for motorcycle sales and sports news.

25. At approximately 4 a.m., the overnight supervisor briefly visited NOEL and THOMAS in the SHU, and conferred with NOEL and THOMAS, who were seated at and around the officers' desk,

before leaving. At approximately 5:30 a.m., another correctional officer briefly walked through the SHU common area. Aside from those two officers, as confirmed by video surveillance, no one else entered the SHU, no one conducted any counts or rounds throughout the night, and no one entered the tier in which Epstein was housed.

26. Shortly after 6 a.m. on August 10, 2019, MICHAEL THOMAS and TOVA NOEL, the defendants, received a delivery of breakfast carts into the SHU, after which time they were again the only officers in the SHU. Shortly after 6:30 a.m., NOEL and THOMAS walked up to and entered the tier in which Epstein was housed to serve breakfast. At approximately 6:33 a.m., an alarm was activated in the SHU. Epstein was alone in his cell and not responsive, with a noose around his neck. A supervisor who had just started his shift ("Supervisor-1") responded to the alarm almost immediately thereafter, and as NOEL approached the door to the SHU to open the door for Supervisor-1, NOEL told Supervisor-1 that "Epstein hung himself." After arriving in the SHU, Supervisor-1 spoke with THOMAS and NOEL. NOEL told Supervisor-1 "we did not complete the 3 a.m. nor 5 a.m. rounds." THOMAS stated, "we messed up," and "I messed up, she's not to blame, we didn't do any rounds."

27. Epstein was transferred to a local hospital where he was declared dead shortly thereafter. The Office of the Chief Medical Examiner of the City of New York conducted an autopsy and determined that Epstein had committed suicide by hanging himself.

STATUTORY ALLEGATIONS

COUNT ONE
(Conspiracy)

The Grand Jury charges:

28. The Grand Jury incorporates the allegations contained in paragraphs 1 through 27 of this Indictment as though fully set forth herein.

29. In or about August 2019, in the Southern District of New York, TOVA NOEL and MICHAEL THOMAS, the defendants, knowingly conspired with each other to:

a. Knowingly defraud the United States by impairing, obstructing, and defeating the lawful functions of a department or agency of the United States, to wit, the MCC's function to ensure the care, custody, and control of its inmate population.

b. Knowingly make and use a false writing or document knowing the same to contain a materially false, fictitious, and fraudulent statement and entry with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any

department or agency of the United States, in violation of Title 18, United States Code, Section 1001 (a)(3).

30. In furtherance of the conspiracy and to effect the illegal objects thereof, TOVA NOEL and MICHAEL THOMAS, the defendants, committed the following overt acts, among others, in the Southern District of New York:

a. On August 10, 2019, NOEL and THOMAS falsely certified, on an MCC count slip, that they had performed the 12 a.m. institutional count of the SHU, when they had not in fact done so.

b. On August 10, 2019, NOEL and THOMAS falsely certified, on an MCC count slip, that they had performed the 3 a.m. institutional count of the SHU, when they had not in fact done so.

c. On August 10, 2019, NOEL and THOMAS falsely certified, on an MCC count slip, that they had performed the 5 a.m. institutional count of the SHU at MCC, when they had not in fact done so.

d. On August 10, 2019, NOEL falsely certified that she and THOMAS had performed a series of 30-minute rounds of the SHU between 12 a.m. and 6:30 a.m., when they had not in fact done so.

(Title 18, United States Code, Section 371)

COUNT TWO

(False Records - 4 p.m. Count)

The Grand Jury further charges:

31. The Grand Jury incorporates the allegations contained in paragraphs 1 through 27 of this Indictment as though fully set forth herein.

32. On or about August 9, 2019, in the Southern District of New York, TOVA NOEL, the defendant, willfully and knowingly did make and use a false writing or document knowing the same to contain a materially false, fictitious, and fraudulent statement and entry with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States, and did attempt to do the same, to wit, NOEL created, signed, and submitted to the MCC a materially false count slip indicating that she had performed the 4 p.m. institutional count of the SHU, when she had not in fact done so.

(Title 18, United States Code, Sections 1001(a)(3) and 2)

COUNT THREE

(False Records - 10 p.m. Count)

The Grand Jury further charges:

33. The Grand Jury incorporates the allegations contained in paragraphs 1 through 27 of this Indictment as though fully set forth herein.

34. On or about August 9, 2019, in the Southern District of New York, TOVA NOEL, the defendant, willfully and knowingly did make and use a false writing or document knowing the same to contain a materially false, fictitious, and fraudulent statement and entry with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States, and did attempt to do the same, to wit, NOEL created, signed, and submitted to the MCC a materially false count slip indicating that she had performed the 10 p.m. institutional count of the SHU, when she had not in fact done so.

(Title 18, United States Code, Sections 1001(a)(3) and 2)

COUNT FOUR
(False Records - 12 a.m. Count)

The Grand Jury further charges:

35. The Grand Jury incorporates the allegations contained in paragraphs 1 through 27 of this Indictment as though fully set forth herein.

36. On or about August 10, 2019, in the Southern District of New York, TOVA NOEL and MICHAEL THOMAS, the defendants, willfully and knowingly did make and use a false writing or document knowing the same to contain a materially false, fictitious, and fraudulent statement and entry with the intent to impede, obstruct, or influence the investigation or proper

administration of any matter within the jurisdiction of any department or agency of the United States, and did attempt to do the same, to wit, NOEL and THOMAS created, signed, and submitted to the MCC a materially false count slip indicating that they had performed the 12 a.m. institutional count of the SHU, when they had not in fact done so.

(Title 18, United States Code, Sections 1001(a)(3) and 2)

COUNT FIVE

(False Records - 3 a.m. Count)

The Grand Jury further charges:

37. The Grand Jury incorporates the allegations contained in paragraphs 1 through 27 of this Indictment as though fully set forth herein.

38. On or about August 10, 2019, in the Southern District of New York, TOVA NOEL and MICHAEL THOMAS, the defendants, willfully and knowingly did make and use a false writing or document knowing the same to contain a materially false, fictitious, and fraudulent statement and entry with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States, and did attempt to do the same, to wit, NOEL and THOMAS created, signed, and submitted to the MCC a materially false count slip indicating that they had

performed the 3 a.m. institutional count of the SHU, when they had not in fact done so.

(Title 18, United States Code, Sections 1001(a)(3) and 2)

COUNT SIX
(False Records - 5 a.m. Count)

The Grand Jury further charges:

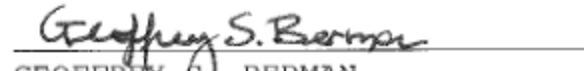
39. The Grand Jury incorporates the allegations contained in paragraphs 1 through 27 of this Indictment as though fully set forth herein.

40. On or about August 10, 2019, in the Southern District of New York, TOVA NOEL and MICHAEL THOMAS, the defendants, willfully and knowingly did make and use a false writing or document knowing the same to contain a materially false, fictitious, and fraudulent statement and entry with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States, and did attempt to do the same, to wit, NOEL and THOMAS created, signed, and submitted to the MCC a materially false count slip indicating that they had

performed the 5 a.m. institutional count of the SHU, when they had not in fact done so.

(Title 18, United States Code, Sections 1001(a)(3) and 2)


FOREPERSON


GEOFFREY S. BERMAN
United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v. -

TOVA NOEL and
MICHAEL THOMAS,

Defendants.

INDICTMENT

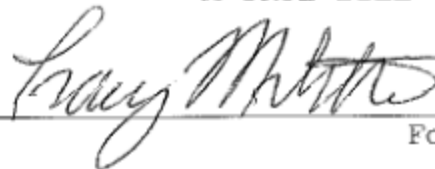
19 Cr.

Title 18, United States Code,
Sections 371, 1001(a)(3), and 2.

GEOFFREY S. BERMAN

United States Attorney

A TRUE BILL



Foreperson.

2 Arrest warrants
Indictment Filed
Assigned to Judge Torres
Hon. Sarah Netburn, USMJ
(P) 11/9/19

Exhibit B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x

UNITED STATES OF AMERICA

- v. -

NICHOLAS TARTAGLIONE,

Defendant.

- - - - - x

SUPERSEDING INDICTMENT

S4 16 Cr. 832 (KMK)

COUNT ONE

The Grand Jury charges:

1. From at least in or about 2015, up to and including in or about April 2016, in the Southern District of New York and elsewhere, NICHOLAS TARTAGLIONE, the defendant, and others known and unknown, intentionally and knowingly did combine, conspire, confederate, and agree together and with each other to violate the narcotics laws of the United States.

2. It was a part and an object of the conspiracy that NICHOLAS TARTAGLIONE, the defendant, and others known and unknown, would and did distribute and possess with intent to distribute a controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

3. The controlled substance that NICHOLAS TARTAGLIONE, the defendant, conspired to distribute and possess with intent to distribute was 5 kilograms and more of mixtures

and substances containing a detectable amount of cocaine, in violation of Title 21, United States Code, Section 841(b)(1)(A).

(Title 21, United States Code, Section 846.)

COUNT TWO

The Grand Jury further charges:

4. In or about April 2016, in the Southern District of New York, while engaged in an offense punishable under Section 841(b)(1)(A) of Title 21, United States Code, to wit, a conspiracy to distribute, and to possess with the intent to distribute, 5 kilograms and more of mixtures and substances containing a detectable amount of cocaine, NICHOLAS TARTAGLIONE, the defendant, intentionally and knowingly killed, and counseled, commanded, induced, procured, and caused the intentional killing of Martin Luna, in and around a bar known as the Likquid Lounge at 69 Brookside Avenue, Chester, New York (the "Likquid Lounge"), and did aid and abet the same.

(Title 21, United States Code, Section 848(e)(1)(A);
Title 18, United States Code, Section 2.)

COUNT THREE

The Grand Jury further charges:

5. In or about April 2016, in the Southern District of New York, while engaged in an offense punishable under Section 841(b)(1)(A) of Title 21, United States Code, to wit, a conspiracy to distribute, and to possess with the intent to

distribute, 5 kilograms and more of mixtures and substances containing a detectable amount of cocaine, NICHOLAS TARTAGLIONE, the defendant, intentionally and knowingly killed, and counseled, commanded, induced, procured, and caused the intentional killing of Urbano Santiago, in and around the vicinity of 419 Old Mountain Road in Otisville, New York, and did aid and abet the same.

(Title 21, United States Code, Section 848(e)(1)(A);
Title 18, United States Code, Section 2.)

COUNT FOUR

The Grand Jury further charges:

6. In or about April 2016, in the Southern District of New York, while engaged in an offense punishable under Section 841(b)(1)(A) of Title 21, United States Code, to wit, a conspiracy to distribute, and to possess with the intent to distribute, 5 kilograms and more of mixtures and substances containing a detectable amount of cocaine, NICHOLAS TARTAGLIONE, the defendant, intentionally and knowingly killed, and counseled, commanded, induced, procured, and caused the intentional killing of Miguel Luna, in and around the vicinity of 419 Old Mountain Road in Otisville, New York, and did aid and abet the same.

(Title 21, United States Code, Section 848(e)(1)(A);
Title 18, United States Code, Section 2.)

COUNT FIVE

The Grand Jury further charges:

7. In, or about April 2016, in the Southern District of New York, while engaged in an offense punishable under Section 841(b)(1)(A) of Title 21, United States Code, to wit, a conspiracy to distribute, and to possess with the intent to distribute, 5 kilograms and more of mixtures and substances containing a detectable amount of cocaine, NICHOLAS TARTAGLIONE, the defendant, intentionally and knowingly killed, and counseled, commanded, induced, procured, and caused the intentional killing of Hector Gutierrez, in and around the vicinity of 419 Old Mountain Road in Otisville, New York, and did aid and abet the same.

(Title 21, United States Code, Section 848(e)(1)(A);
Title 18, United States Code, Section 2.)

COUNT SIX

The Grand Jury further charges:

8. On or about April 11, 2016, in the Southern District of New York, NICHOLAS TARTAGLIONE, the defendant, willfully and knowingly, during and in relation to a drug trafficking crime for which he may be prosecuted in a court of the United States, namely, the narcotics conspiracy charged in Count One of this Indictment, did use and carry a firearm, and, in furtherance of such drug trafficking crime, did possess a

firearm, and in the course of that drug trafficking crime did, through the use of a firearm, cause the death of Urbano Santiago, which killing was murder as defined in Title 18, United States Code, Section 1111(a), and did aid and abet the same.

(Title 18, United States Code, Sections 924(j) and 2.)

COUNT SEVEN

The Grand Jury further charges:

9. On or about April 11, 2016, in the Southern District of New York, NICHOLAS TARTAGLIONE, the defendant, willfully and knowingly, during and in relation to a drug trafficking crime for which he may be prosecuted in a court of the United States, namely, the narcotics conspiracy charged in Count One of this Indictment, did use and carry a firearm, and, in furtherance of such drug trafficking crime, did possess a firearm, and in the course of that drug trafficking crime did, through the use of a firearm, cause the death of Miguel Luna, which killing was murder as defined in Title 18, United States Code, Section 1111(a), and did aid and abet the same.

(Title 18, United States Code, Sections 924(j) and 2.)

COUNT EIGHT

The Grand Jury further charges:

10. On or about April 11, 2016, in the Southern District of New York, NICHOLAS TARTAGLIONE, the defendant,

willfully and knowingly, during and in relation to a drug trafficking crime for which he may be prosecuted in a court of the United States, namely, the narcotics conspiracy charged in Count One of this Indictment, did use and carry a firearm, and, in furtherance of such drug trafficking crime, did possess a firearm, and in the course of that drug trafficking crime did, through the use of a firearm, cause the death of Hector Gutierrez, which killing was murder as defined in Title 18, United States Code, Section 1111(a), and did aid and abet the same.

(Title 18, United States Code, Sections 924(j) and 2.)

COUNT NINE

The Grand Jury further charges:

11. On or about April 11, 2016, in the Southern District of New York and elsewhere, NICHOLAS TARTAGLIONE, the defendant, and others known and unknown, unlawfully and knowingly did conspire to violate Title 18, United States Code, Section 1201.

12. It was a part and an object of the conspiracy that NICHOLAS TARTAGLIONE, the defendant, and others known and unknown, would and did unlawfully seize, confine, inveigle, decoy, kidnap, abduct, and carry away and hold for ransom and reward and otherwise a person, and used a means, facility, and instrumentality of interstate and foreign commerce in committing

and in furtherance of the commission of the offense, to wit, TARTAGLIONE and others known and unknown agreed to inveigle, seize, and confine Martin Luna, Urbano Santiago, Miguel Luna, and Hector Gutierrez in and around the Likquid Lounge.

Overt Act

13. In furtherance of the conspiracy and to effect the illegal object thereof, the following overt act, among others, was committed in the Southern District of New York and elsewhere:

a. On or about April 11, 2016, NICHOLAS TARTAGLIONE and others lured Martin Luna to the Likquid Lounge, where TARTAGLIONE and others confined Martin Luna, Urbano Santiago, Miguel Luna, and Hector Gutierrez and would not permit them to leave the premises.

(Title 18, United States Code, Section 1201(c).)

COUNT TEN

The Grand Jury further charges:

14. On or about April 11, 2016, in the Southern District of New York and elsewhere, NICHOLAS TARTAGLIONE, the defendant, and others known and unknown, unlawfully, willfully, and knowingly did seize, confine, inveigle, decoy, kidnap, abduct, and carry away and hold for ransom and reward and otherwise a person, and used a means, facility, and instrumentality of interstate and foreign commerce in committing

and in furtherance of the commission of the offense, and did aid and abet the same, to wit, TARTAGLIONE lured Martin Luna to the Likquid Lounge and confined Martin Luna in and around the Likquid Lounge, which resulted in the death of Martin Luna.

(Title 18, United States Code, Sections 1201(a)(1) and 2.)

COUNT ELEVEN

The Grand Jury further charges:

15. On or about April 11, 2016, in the Southern District of New York and elsewhere, NICHOLAS TARTAGLIONE, the defendant, and others known and unknown, unlawfully, willfully, and knowingly did seize, confine, inveigle, decoy, kidnap, abduct, and carry away and hold for ransom and reward and otherwise a person, and used a means, facility, and instrumentality of interstate and foreign commerce in committing and in furtherance of the commission of the offense, and did aid and abet the same, to wit, TARTAGLIONE and others seized and confined Urbano Santiago in and around the Likquid Lounge and in and around the vicinity of 419 Old Mountain Road in Otisville, New York, which resulted in the death of Urbano Santiago.

(Title 18, United States Code, Sections 1201(a)(1) and 2.)

COUNT TWELVE

The Grand Jury further charges:

16. On or about April 11, 2016, in the Southern District of New York and elsewhere, NICHOLAS TARTAGLIONE, the

defendant, and others known and unknown, unlawfully, willfully, and knowingly did seize, confine, inveigle, decoy, kidnap, abduct, and carry away and hold for ransom and reward and otherwise a person, and used a means, facility, and instrumentality of interstate and foreign commerce in committing and in furtherance of the commission of the offense, and did aid and abet the same, to wit, TARTAGLIONE and others seized and confined Miguel Luna in and around the Likvid Lounge and in and around the vicinity of 419 Old Mountain Road in Otisville, New York, which resulted in the death of Miguel Luna.

(Title 18, United States Code, Sections 1201(a)(1) and 2.)

COUNT THIRTEEN

The Grand Jury further charges:

17. On or about April 11, 2016, in the Southern District of New York and elsewhere, NICHOLAS TARTAGLIONE, the defendant, and others known and unknown, unlawfully, willfully, and knowingly did seize, confine, inveigle, decoy, kidnap, abduct, and carry away and hold for ransom and reward and otherwise a person, and used a means, facility, and instrumentality of interstate and foreign commerce in committing and in furtherance of the commission of the offense, and did aid and abet the same, to wit, TARTAGLIONE and others seized and confined Hector Gutierrez in and around the Likvid Lounge and in and around the vicinity of 419 Old Mountain Road in

Otisville, New York, which resulted in the death of Hector Gutierrez.

(Title 18, United States Code, Sections 1201(a)(1) and 2.)

COUNT FOURTEEN

The Grand Jury further charges:

18. On or about April 11, 2016, in the Southern District of New York and elsewhere, NICHOLAS TARTAGLIONE, the defendant, knowingly traveled in interstate and foreign commerce and used the mails and any facility in interstate and foreign commerce with intent to commit a crime of violence, namely, assault and murder, to further an unlawful activity, namely, a business enterprise involving a controlled substance, and with intent to promote, manage, establish, and carry on, and facilitate the promotion, management, establishment, and carrying on of the unlawful activity, and thereafter did perform a crime of violence to further the unlawful activity, and did aid and abet the same, and death resulted, to wit, TARTAGLIONE arranged for Martin Luna to be lured to the Likquid Lounge, where Luna was killed.

(Title 18, United States Code, Sections 1952
and 2.)

COUNT FIFTEEN

The Grand Jury further charges:

19. On or about April 11, 2016, in the Southern District of New York and elsewhere, NICHOLAS TARTAGLIONE, the

defendant, knowingly traveled in interstate and foreign commerce and used the mails and any facility in interstate and foreign commerce with intent to commit a crime of violence, namely, assault and murder, to further an unlawful activity, namely, a business enterprise involving a controlled substance, and with intent to promote, manage, establish, and carry on, and facilitate the promotion, management, establishment, and carrying on of the unlawful activity, and thereafter did perform a crime of violence to further the unlawful activity, and did aid and abet the same, and death resulted, to wit, after Urbano Santiago accompanied Martin Luna to the Likquid Lounge, where Luna had been lured by TARTAGLIONE and others, Urbano Santiago was held captive, transported to the vicinity of 419 Old Mountain Road in Otisville, New York, and killed.

(Title 18, United States Code, Sections 1952
and 2.)

COUNT SIXTEEN

The Grand Jury further charges:

20. On or about April 11, 2016, in the Southern District of New York and elsewhere, NICHOLAS TARTAGLIONE, the defendant, knowingly traveled in interstate and foreign commerce and used the mails and any facility in interstate and foreign commerce with intent to commit a crime of violence, namely, assault and murder, to further an unlawful activity, namely, a business enterprise involving a controlled substance, and with

intent to promote, manage, establish, and carry on, and facilitate the promotion, management, establishment, and carrying on of the unlawful activity, and thereafter did perform a crime of violence to further the unlawful activity, and did aid and abet the same, and death resulted, to wit, after Miguel Luna accompanied Martin Luna to the Likquid Lounge, where Martin Luna had been lured by TARTAGLIONE and others, Miguel Luna was held captive, transported to the vicinity of 419 Old Mountain Road in Otisville, New York, and killed.

(Title 18, United States Code, Sections 1952
and 2.)

COUNT SEVENTEEN

The Grand Jury further charges:

21. On or about April 11, 2016, in the Southern District of New York and elsewhere, NICHOLAS TARTAGLIONE, the defendant, knowingly traveled in interstate and foreign commerce and used the mails and any facility in interstate and foreign commerce with intent to commit a crime of violence, namely, assault and murder, to further an unlawful activity, namely, a business enterprise involving a controlled substance, and with intent to promote, manage, establish, and carry on, and facilitate the promotion, management, establishment, and carrying on of the unlawful activity, and thereafter did perform a crime of violence to further the unlawful activity, and did aid and abet the same, and death resulted, to wit, after Hector

Gutierrez accompanied Martin Luna to the Likvid Lounge, where Luna had been lured by TARTAGLIONE and others, Hector Gutierrez was held captive, transported to the vicinity of 419 Old Mountain Road in Otisville, New York, and killed.

(Title 18, United States Code, Sections 1952
and 2.)

SPECIAL FINDINGS

22. Counts Two and Ten of this Indictment are realleged and incorporated by reference as though fully set forth herein. As to Counts Two and Ten, alleging the intentional killing of Martin Luna in furtherance of a drug trafficking crime (Count Two) and the kidnapping resulting in death of Martin Luna (Count Ten), the defendant NICHOLAS TARTAGLIONE:

a. was 18 years of age or older at the time of the offense (Title 18, United States Code, Section 3591(a)(2));

b. intentionally killed the victim (Title 18, United States Code, Section 3591(a)(2)(A));

c. intentionally inflicted serious bodily injury that resulted in the death of the victim (Title 18, United States Code, Section 3591(a)(2)(B));

d. intentionally participated in an act, contemplating that the life of a person would be taken and intending that lethal force would be used in connection with a

person, other than one of the participants in the offense, and the victim died as a direct result of the act (Title 18, United States Code, Section 3591(a)(2)(C));

e. intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for human life and the victim died as a direct result of the act (Title 18, United States Code, Section 3591(a)(2)(D));

f. caused the death, and injury resulting in death, of the victim, during the commission of an offense under Title 18, United States Code, Section 1201 (kidnapping) (Title 18, United States Code, Section 3592(c)(1));

g. committed the offense in an especially heinous, cruel, and depraved manner in that it involved torture and serious physical abuse to the victim (Title 18, United States Code, Section 3592(c)(6));

h. committed the offense after substantial planning and premeditation to cause the death of a person (Title 18, United States Code, Section 3592(c)(9)); and

i. intentionally killed and attempted to kill more than one person in a single criminal episode (Title 18, United States Code, Section 3592(c)(16)).

23. Counts Three, Six, and Eleven of this Indictment are realleged and incorporated by reference as though fully set forth herein. As to Counts Three, Six, and Eleven, alleging the intentional killing of Urbano Santiago in furtherance of a drug trafficking crime (Count Three), the murder of Urbano Santiago through the use of a firearm in furtherance of a drug trafficking crime (Count Six), and the kidnapping resulting in death of Urbano Santiago (Count Eleven), the defendant NICHOLAS TARTAGLIONE:

a. was 18 years of age or older at the time of the offense (Title 18, United States Code, Section 3591(a)(2));

b. intentionally participated in an act, contemplating that the life of a person would be taken and intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and the victim died as a direct result of the act (Title 18, United States Code, Section 3591(a)(2)(C));

c. intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for human life and the victim died as a direct result of the act (Title 18, United States Code, Section 3591(a)(2)(D);

d. caused the death, and injury resulting in death, of the victim, during the commission of an offense under Title 18, United States Code, Section 1201 (kidnapping) (Title 18, United States Code, Section 3592(c)(1));

e. committed the offense after substantial planning and premeditation to cause the death of a person (Title 18, United States Code, Section 3592(c)(9)); and

f. intentionally killed more than one person in a single criminal episode (Title 18, United States Code, Section 3592(c)(16)).

24. Counts Four, Seven, and Twelve of this Indictment are realleged and incorporated by reference as though fully set forth herein. As to Four, Seven, and Twelve, alleging the intentional killing of Miguel Luna in furtherance of a drug trafficking crime (Count Four), the murder of Miguel Luna through the use of a firearm in furtherance of a drug trafficking crime (Count Seven), and the kidnapping resulting in death of Miguel Luna (Count Eleven), the defendant NICHOLAS TARTAGLIONE:

a. was 18 years of age or older at the time of the offense (Title 18, United States Code, Section 3591(a)(2));

b. intentionally participated in an act, contemplating that the life of a person would be taken and intending that lethal force would be used in connection with a

person, other than one of the participants in the offense, and the victim died as a direct result of the act (Title 18, United States Code, Section 3591(a)(2)(C));

c. intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for human life and the victim died as a direct result of the act (Title 18, United States Code, Section 3951(a)(2)(D));

d. caused the death, and injury resulting in death, of the victim, during the commission of an offense under Title 18, United States Code, Section 1201 (kidnapping) (Title 18, United States Code, Section 3592(c)(1));

e. committed the offense after substantial planning and premeditation to cause the death of a person (Title 18, United States Code, Section 3592(c)(9)); and

f. intentionally killed more than one person in a single criminal episode (Title 18, United States Code, Section 3592(c)(16)).

25. Counts Five, Eight, and Thirteen of this Indictment are realleged and incorporated by reference as though fully set forth herein. As to Counts Five, Eight, and Thirteen, alleging the intentional killing of Hector Gutierrez in

furtherance of a drug trafficking crime (Count Five), the murder of Hector Gutierrez through the use of a firearm in furtherance of a drug trafficking crime (Count Eight), and the kidnapping resulting in death of Hector Gutierrez (Count Thirteen), the defendant NICHOLAS TARTAGLIONE:

a. was 18 years of age or older at the time of the offense (Title 18, United States Code, Section 3591(a)(2));

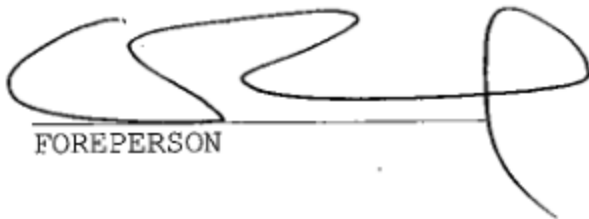
b. intentionally participated in an act, contemplating that the life of a person would be taken and intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and the victim died as a direct result of the act (Title 18, United States Code, Section 3591(a)(2)(C));

c. intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for human life and the victim died as a direct result of the act (Title 18, United States Code, Section 3591(a)(2)(D);

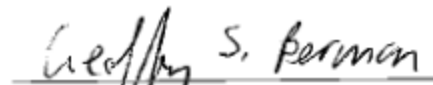
d. caused the death, and injury resulting in death, of the victim, during the commission of an offense under Title 18, United States Code, Section 1201 (kidnapping) (Title 18, United States Code, Section 3592(c)(1));

e. committed the offense after substantial planning and premeditation to cause the death of a person (Title 18, United States Code, Section 3592(c)(9)); and

f. intentionally killed more than one person in a single criminal episode (Title 18, United States Code, Section 3592(c)(16)).



FOREPERSON



GEOFFREY S. BERMAN
United States Attorney

Form No. USA-33s-274 (Ed. 9-25-58)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- v. -

NICHOLAS TARTAGLIONE,

Defendant.

SUPERSEDING INDICTMENT

S4 16 Cr. 832 (KMK)

(21 U.S.C. §§ 846 and 848(e);
18 U.S.C. §§ 924(j), 1201(c),
1201(a)(1), 1952, and 2.)



Foreperson

GEOFFREY S. BERMAN
United States Attorney.

From:

To:

Cc:

Subject: OPR - Epstein

Date: Thu, 06 Aug 2020 20:08:31 +0000

██████ – We just got the draft report from OPR. For reasons I don't fully understand, Outlook is not allowing me to forward the report itself. But assuming I resolve that, any reason I can't share with the team?

Thanks,

████████████████████
U.S. Attorney's Office for the
Southern District of New York
████████████████████

From: "[REDACTED] (USANYS)" <[REDACTED]>
To: "[REDACTED] (USANYS)" <[REDACTED]>, [REDACTED] (USANYS)" <[REDACTED]>
Subject: RE:
Date: Tue, 14 Jul 2020 19:15:40 +0000

I agree on both points. Did we initially ask FBI for their entire SENTRY file? I think we may want to do that to be safe.

-----Original Message-----

From: [REDACTED] (USANYS) <[REDACTED]>
Sent: Tuesday, July 14, 2020 3:12 PM
To: [REDACTED] (USANYS) <[REDACTED]>, [REDACTED] (USANYS) <[REDACTED]>
Subject: FW:

See attached - I think we need to ask [REDACTED] what Lt. [REDACTED] reviewed to get this information.

Also, I don't think I've seen this 302 before. [REDACTED] I thought we had asked FBI for all 302s, but I could be mis-remembering. Either way, I think we should do so again.

-----Original Message-----

From: [REDACTED] (NY) (FBI) <[REDACTED]>
Sent: Tuesday, July 14, 2020 2:51 PM
To: [REDACTED] (USANYS) <[REDACTED]>
Subject:

Hey [REDACTED] ---

When looking through my case file, this is where [REDACTED] documented the phone number and last call made by Epstein. Let me know if you need anything else...

[REDACTED]
[REDACTED]
Special Agent
FBI New York Field Office
Violent Crimes Task Force
[REDACTED]

From: "[REDACTED]" >

To: [REDACTED]
[REDACTED]

Cc: [REDACTED]
[REDACTED]

Subject: RE: RE: brief Epstein status

Date: Sun, 09 Dec 2018 19:39:05 +0000

Importance: Normal

[REDACTED]

From: [REDACTED]

Sent: Sunday, December 9, 2018 1:46 PM

To: [REDACTED]
[REDACTED]

Subject: RE: RE: brief Epstein status

[REDACTED]
[REDACTED] ?

From: [REDACTED]

Sent: Sunday, December 9, 2018 1:33 AM

To: [REDACTED] >; [REDACTED] <[REDACTED]>

Cc: [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>

Subject: RE: brief Epstein status

[REDACTED],

[REDACTED]
[REDACTED]

[REDACTED]:

- Dozens of media reports, dating back to the early 2000s and through this weekend, and including setting up Google alerts for anything new
- Two books on the investigation and underlying conduct, one by James Patterson and one by an independent investigator
- Filings for approximately 20 related civil cases
- More than 500 pages of 302s
- Primary source documents including the "black book," the NPA, and other underlying investigative materials as we receive them

Attached is a spreadsheet that has tabs for preliminary info and sources on: Witnesses/CCs; Accusers and Victims; Victim attorneys; Epstein attorneys; civil cases; relevant law enforcement individuals; a very brief chronology; and the most relevant press articles. [REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED].

[REDACTED]

thanks,
[REDACTED]

[REDACTED]
Assistant U.S. Attorney
Southern District of New York
[REDACTED]

Cc: [REDACTED] (CRM) <[REDACTED]>

Subject: RE: Independent: Prince Andrew: Refusal to talk to Epstein investigators 'straining relations between UK and America'

We also just got the following questions on the new MLA request. I have given preliminary responses (as noted), but want to confirm with you.

1. Has the witness consented to the release of the information requested? If so, please a copy of the written consent.

The witness has not been asked for written consent. However, counsel for the witness has encouraged the prosecutors to seek this information. It can be inferred from the statements of counsel that the witness has consented.

2. [REDACTED] did the witness apply to and what was the year of her application/attendance?

The team was uncertain of which college (I had asked this). Is there a central office at [REDACTED] which can be queried for all colleges?

3. How, if at all does this request relate to/impact the material witness MLA request?

This request relates to the charged Maxwell case going to trial. The material witness MLA requests relates to a broader investigation.

4. What were the sentences which applied at the date of the offences (1994 – 2004), as the penalties provided with the request apply to conduct that occurred after 27 July 2006?

I will check with the case team to confirm specific periods. The sentences will be greater than one year and less than life (with no death penalty involved), so is there a need to be more precise?

U.S. Department of Justice Attaché - London



United States Embassy
33 Nine Elms Lane
London SW11 7US

From: [REDACTED] (CRM)

Sent: Thursday, August 12, 2021 9:03 AM

To: [REDACTED]) [REDACTED]) [REDACTED]

(USANYS)

Cc: [REDACTED] (CRM)

Subject: FW: Independent: Prince Andrew: Refusal to talk to Epstein investigators 'straining relations between UK and America'

You guys have a moment for a brief call this morning? The Ambassador is concerned about the attached story, and I wanted to see if you have any sense of where this is coming from. Is this coming from victims' counsel? Anyone in your shop decided to push this?

EFTA00039968

The quote from the State Department yesterday in the NY Times was unhelpful (and I let them know it – I think it came from someone spouting off on the European Desk).

I also had the following email from the UKCA yesterday:

We are aware that a civil case has been filed in New York concerning the Epstein investigation with the material witness as the defendant. Please can you let us know what impact this has on the material witness's current status, as a witness, in the criminal investigation and in relation to the MLA request.

I think they are asking whether, in light of the recent allegations, [REDACTED] is now a suspect instead of a witness (in British parlance). I was going to respond with one word "none" but thought I should check first.

I am around today whenever you can chat. The earlier the better because the Amb is keen to sort this out.

Thanks,

[REDACTED]

U.S. Department of Justice Attaché - London



United States Embassy
33 Nine Elms Lane
London SW11 7US

[REDACTED]

From this morning's Independent

Fears issue over Duke of York could affect wider efforts to collaborate on high-profile legal cases.

US authorities are growing increasingly frustrated with Prince Andrew's failure to cooperate into their probe into the network surrounding convicted sex offender Jeffrey Epstein, exacerbating tensions between Washington and London, The Independent understands.

People familiar with authorities' investigations into Mr Epstein's business affairs told The Independent that the lack of information-sharing had caused diplomatic strain, with US law enforcement and diplomats raising the matter with their British counterparts.

They said a new civil case brought by [REDACTED], alleging the Duke of York had sexually abused her, will add further strain over the issue, along with the prosecution of Epstein's former girlfriend Ghislaine Maxwell, who is set to go on trial for sex trafficking charges later this year.

There are fears that the issue could sour broader efforts to collaborate on high profile legal cases.

The prince has consistently denied the allegations, while Ms Maxwell denies the charges against her.

The lack of cooperation now spans three years of reported attempts by the US authorities to gather facts from the royal who, in a statement from 2019, said he would be willing to help US law-enforcement with investigations. However, in January last year, Manhattan US attorney Geoffrey Berman said the country's authorities had received "zero cooperation" from the prince, who no longer carries out royal duties.

In June 2020, The Wall Street Journal reported that an application had been made by the Department of Justice (DoJ) under a US-UK mutual legal assistance treaty in order to win cooperation from the Duke of York.

This avenue has not been effective, according to sources. They contend that Prince Andrew has failed to share details of the extent of his ties to Mr Epstein, whose death in a Manhattan prison in 2019 was ruled a suicide. The extent and nature of Mr Epstein's financial network is still being explored in several jurisdictions, including the US.

Of particular interest to the US authorities is how money transfers may be linked to the movement of young women and girls. The various interested bodies, including the FBI, believe these may offer insights into ongoing organised criminal operations.

These probes are significant not only for legal proceedings related to Epstein, but also to ongoing investigations surrounding Ms Maxwell, who is currently in prison awaiting trial on sex-trafficking charges.

It is also alleged that multiple authorities are seeking details of flights that the Duke of York used to visit Epstein in a range of locations, so that they can better understand how people may have travelled into and out of the disgraced financier's orbit. The authorities' interests are understood to include multiple trips by the royal to Epstein's Caribbean island, Little St James, as well as Florida and New York.

Last year, prosecutors in the US Virgin Islands, which includes Little St James, alleged Mr Epstein abused hundreds of young women and girls up until 2018.

The frustration over the Duke of York's lack of cooperation is said to be amplified by the fact that it appears unlikely that the royal would be extradited. His cooperation would therefore be a matter of bolstering diplomatic relations and sharing any information which could help avoid future trafficking of young women and girls.

The lawyer representing Ms [REDACTED] has accused the prince, who is facing the Queen after arriving at Balmoral on Tuesday, of "stonewalling" appeals for information after the 15-page lawsuit was filed in New York. The prince is the only defendant in the suit, which alleges she was "lent out for sexual purposes" by Epstein. [REDACTED] Boies said his client ultimately wanted "vindication" from the legal action.

In 2019, Prince Andrew told the BBC that he had not had sex with [REDACTED] "It didn't happen," he said. He also said that he had no recollection of having met her.

From: [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Subject: DRAFT 302 [REDACTED]

Date: Fri, 30 Aug 2019 16:56:20 +0000

Attachments: Interview_of_Corrections_Officer [REDACTED] - _DRAFT.pdf

DRAFT 302 of [REDACTED]

[REDACTED]
Special Agent
FBI New York Field Office
Violent Crimes Task Force

[REDACTED]
[REDACTED]



FEDERAL BUREAU OF INVESTIGATION

Date of entry 08/15/2019

██████████, Captain, FEDERAL BUREAU OF PRISONS (BOP), place of employment METROPOLITAN CORRECTIONAL CENTER (MCC), 150 Park Row, New York, NY 10007, was interviewed at the FBI New York Field Office, 290 Broadway, New York, NY 10278 by FBI Special Agent ██████████ and OIG Special Agent ██████████. Agents reviewed a standard OIG interview waiver form; ██████████ signed the form and agreed to a voluntary interview. After the Agents introduced themselves and explained the purpose of the interview, ██████████ provided the following information:

██████████ began his career with the BOP in Florence, CO in 2005. In 2014, he was transferred to the METROPOLITAN DETENTION CENTER (MDC) in Brooklyn, NY, where he was made Deputy Captain in 2015. In 2018, ██████████ was promoted to Captain at MCC, his current position, where he oversees security for the entire building. ██████████ directly supervises approximately 13 Lieutenants, and has approximately 125-134 line staff / Correctional Officers under his purview. ██████████ also sits on the institution's Executive staff, which also includes the Warden. ██████████ primary duty is to ensure that security protocols are met by his Lieutenants and sub-staff, and that policy guidelines are being followed as set forth by the BOP. Among others, ██████████ is responsible for the following: a Special Housing Unit (SHU) Lieutenant, Lieutenant ██████████; an Administrative Lieutenant, responsible for maintaining paperwork, etc.; an SIS Lieutenant, responsible for paperwork; an Operations & Activities Lieutenant(s), responsible for day-to-day operations and maintaining order for three (3) shifts; and an Emergency Preparedness Lieutenant, a collateral duty responsible in the event of emergency incidents such as a fires, bomb threats, etc.

██████████ advised that his staff provides special considerations for high profile inmates, if deemed appropriate and designated as such. In order to ensure an inmate is provided with proper care, the facility evaluates the inmate using several measures, including mental, physical, medical,

Investigation on 08/12/2019 at New York, New York, United States (In Person)File # ██████████ Date drafted 08/13/2019by ██████████

[REDACTED]

Continuation of FD-302 of (U) Interview of [REDACTED], On 08/12/2019, Page 2 of 6

psychological, and sexual assault victim or predator assessments. Since different inmates are admitted with different criteria, appropriate housing varies.

[REDACTED] interacted with inmate JEFFREY EPSTEIN on approximately three occasions at MCC, all of which EPSTEIN maintained a pleasant demeanor. During the first instance, EPSTEIN asked [REDACTED] who he was, and [REDACTED] responded by introducing himself and explaining his position at the jail. During another instance, [REDACTED] explained to EPSTEIN the policy regarding meals during attorney sessions, and made certain EPSTEIN was accommodated with water, visits to the restroom, etc. EPSTEIN spent most of the day with his defense counsel, and was brought down as soon as attorney visiting opened.

[REDACTED] was made aware of the possibility that EPSTEIN would be housed at MCC in advance of EPSTEIN'S arrival. [REDACTED] was not present when inmate EPSTEIN was admitted to the facility. EPSTEIN was thoroughly vetted to determine if he was fit for General Population (GP) and was ultimately placed in the Special Housing Unit (SHU). MCC places inmates under three categories of close supervision: 1. "Dry Cell" for those at risk for smuggling contraband, 2. Psychological Observation, and 3. Suicide Watch.

[REDACTED] advised that EPSTEIN preferred not to have a cellmate and engaged in manipulative behavior to avoid having one, including requesting to see a psychologist. At EPSTEIN'S request, he was interviewed by a psychologist. Following this assessment, EPSTEIN was initially placed on Suicide Watch. He was later interviewed again and downgraded to Psychological Observation, because he was determined not to have suicidal tendencies. After some time, he was returned to the SHU. [REDACTED] began hearing talk that EPSTEIN was trying to get back on Suicide Watch. Information like this is usually generated from rounds, "kites", and monitoring of phone calls and letters.

On or about July 23, 2019, EPSTEIN was found unresponsive on the floor of his cell with a homemade piece of fabric on his chest. EPSTEIN'S cellmate had flagged the attention of a staff member, who handcuffed the cellmate and removed EPSTEIN to bring him to the medical unit. [REDACTED] heard from his staff that EPSTEIN may have been faking unconsciousness, because he was observed opening his eyes and making other suspicious movements not consistent with an unconscious state. EPSTEIN was medically assessed and

[REDACTED]

Continuation of FD-302 of (U) Interview of [REDACTED], On 08/12/2019, Page 3 of 6

became coherent. EPSTEIN claimed that his cellmate, [REDACTED], tried to take his life. He was placed back on Suicide Watch for approximately one week. Unlike his first and previous placement on Suicide Watch, EPSTEIN now has definitive suicidal tendencies reported in his incarceration history. The staff was tasked with determining whether EPSTEIN was in fact suicidal, or using manipulative tactics to avoid assignment of a cellmate. After Suicide Watch, EPSTEIN was placed on Psychological Observation and eventually returned to the SHU.

At the direction of the Warden, [REDACTED] initiated the process of compiling possible cellmates for EPSTEIN, vetting them, and submitting candidates to the Warden for his review. [REDACTED] and his staff fully screened potential cellmates and reported their determinations up to the Warden. [REDACTED] was selected and housed in a cell with EPSTEIN. The Assistant Warden, Warden, and Regional Director were notified.

The Warden directed [REDACTED] on multiple occasions that EPSTEIN needed a cellmate at all times, and [REDACTED] verbally informed his Lieutenants the same. [REDACTED] repeatedly directed his SHU Lieutenant, Lieutenant [REDACTED], that EPSTEIN needed a cellmate at all times. Additionally, [REDACTED] visited the SHU on multiple occasions and directed staff to be very alert and attentive about EPSTEIN'S special accommodations.

On Friday, August 9, 2019, Lieutenant [REDACTED] was on leave and, thus, there was no dedicated Lieutenant assigned to the SHU. In this event, the Operation Lieutenant, Lieutenant [REDACTED], had oversight that day and took over the responsibilities of the SHU Lieutenant. Lieutenant [REDACTED] was aware that EPSTEIN was required to be housed with a cellmate, because approximately one week prior to EPSTEIN'S death, [REDACTED] informally advised his Lieutenants that EPSTEIN was not be housed alone, and emphasized the need to be vigilant about "30-minute checks" and unannounced rounds.

Inmates/cellmates are moved for various reasons, including but not limited to, an incident in the cell, visits to court, legal library, medical, and recreation. On Friday, August 9, 2019, EPSTEIN'S cellmate, [REDACTED], had court. It would not be uncommon for [REDACTED] to be out of his cell for an extended period. EPSTEIN had an attorney session that day. EPSTEIN'S attorney was processed into the facility in the morning and EPSTEIN was brought down to the attorney room. [REDACTED] was not notified that

Continuation of FD-302 of (U) Interview of [REDACTED], On 08/12/2019, Page 4 of 6

[REDACTED] was released from court.

Typically, if an inmate is likely to be discharged or transferred following court, their property is retrieved from their cell, boxed, and secured with a property form by Receiving and Discharge staff. All items are normally accounted for and inventoried. In order to enter the SHU, all staff not assigned there must identify themselves and sign the logbook, then be physically escorted by a Correctional Officer. Alternatively, the staff can pick up inmate property at the Unit door. A Correctional Officer assigned to the SHU would have been aware that [REDACTED], or any inmate's, belongings were removed. At this time, the Correctional Officer should notify a Lieutenant, who would in turn brief [REDACTED]. [REDACTED] was not notified that [REDACTED]' belongings were removed. [REDACTED] advised that if he had known that EPSTEIN was without a cellmate, he would have likely put EPSTEIN on Psychological Observation. [REDACTED] is not aware of any Lieutenants knowing that [REDACTED]' property was moved.

On Saturday, August 10, 2019, [REDACTED] received a phone call from Lieutenant [REDACTED] around 7:00 AM, and was told that EPSTEIN was found unresponsive in his cell. [REDACTED] inquired about EPSTEIN'S cellmate and was surprised to hear [REDACTED] respond that EPSTEIN did not have a cellmate.

[REDACTED] worked a 4:00 PM - 10:00 PM shift on August 9, 2019. [REDACTED] was relieved by Lieutenant [REDACTED], who was assigned the 10 PM - 6 AM shift. [REDACTED] did not personally tell [REDACTED] that EPSTEIN required a cellmate at all times. He believed she was aware because he had informed his Lieutenants repeatedly, and instructed them to pass this message along and convey the information amongst themselves. [REDACTED] did not hold a formal all-Lieutenant meeting regarding EPSTEIN, or send a staff email with the Warden's directive. He verbally instructed his Lieutenants on an informal and individual basis, as many as possible with whom he had the opportunity. On Saturday morning, August 10, 2019, [REDACTED] was relieved early by [REDACTED].

In the SHU, 30-minute rounds need to be completed consistently at nonuniform intervals within a 40-minute time frame. The purpose of these rounds is to ensure that good order is being maintained, there is no suspicious activity, and all inmates are accounted for and responsive. 30-minute rounds are documented in TRUSCOPE, which serves as an electronic logbook. After a round is physically done, the Correctional Officer can log

Continuation of FD-302 of (U) Interview of [REDACTED], On 08/12/2019, Page 5 of 6

[REDACTED] in to TRUSCOPE and press a button certifying that the round was completed. Unfortunately, sometimes officers do not complete a 30-minute round, or exceed the 40-minute threshold. TRUSCOPE also documents from what location/terminal the rounds are logged. [REDACTED] is aware of at least two (2) terminals located in the SHU. The only way to determine if a 30-minute round was physically completed is to check the video surveillance footage.

There are two (2) Correctional Officers assigned to the SHU on morning watch at midnight, SHU1 and SHU2. SHU2 is responsible for completing rounds.

[REDACTED] was unaware that the camera system in the SHU was down. He left early on Thursday when the discussion about the camera system would have occurred. MR. [REDACTED], the camera technician, notified [REDACTED] that he was working on the system earlier that week, but [REDACTED] did not know specifics and was not informed that the cameras were not functioning. Since the building is in the middle of a camera project, [REDACTED] assumed the camera work may have been related. [REDACTED] was first notified that the cameras were down on Saturday morning, August 10, 2019, when he arrived at MCC and asked to see the video. Correctional Officers do not typically know when the cameras are down.

After receiving the phone call from [REDACTED] on the morning of Saturday, August 10, 2019, [REDACTED] notified Associate Warden [REDACTED], who informed the Warden. [REDACTED] also attempted to call Institution Duty Officer [REDACTED], the Chaplain, and the building, to get more information. He then went to MCC, arriving before 8:00 AM, approximately. Upon arrival, [REDACTED] screened in and retrieved his gear from the 3rd Floor. He went to the SHU and signed the logbook. He gathered any records pertaining to EPSTEIN, including the 30-minute rounds logbook, the attorney conference logbook, count slips, and EI's. He could not locate EPSTEIN'S inmate file. He also asked to view the camera footage. The Warden was already present at the facility when [REDACTED] arrived.

[REDACTED] expressed to [REDACTED] that the staff admitted to her they did not complete rounds, the 3:00 AM and 5:00 AM counts, and that Officer [REDACTED] entered EPSTEIN'S cell without supervision. EPSTEIN was placed on the floor to administer lifesaving efforts. [REDACTED] informed Associate Warden [REDACTED] about what Officers [REDACTED] admitted to [REDACTED].

Continuation of FD-302 of (U) Interview of [REDACTED], On 08/12/2019, Page 6 of 6

[REDACTED] had concerns about the whereabouts of EPSTEIN'S cellmate. Some of his staff were under the impression that [REDACTED] was released from the SHU, which [REDACTED] later confirmed was not true.

The purpose of the 3:00 AM and 5:00 AM counts is to physically count and confirm each person in each cell. There were no entries of counts in TRUSCOPE the entire night. If technology is down, the Correctional Officers also have the option to document the count on a hardcopy form. Although there are no electronic records of counts, hardcopies may have been retained.

All inmate phone calls in the SHU are monitored and inmates have limited access to phone calls. All calls should be recorded. [REDACTED] was not aware of any issues or complaints with EPSTEIN related to phone calls. On Saturday, August 10, 2019, [REDACTED] was told that EPSTEIN made a phone call at approximately 7:00 PM on the evening of Friday, August 9, 2019. It is uncommon to make an unrecorded phone call in the SHU, and [REDACTED] would advise against it because calls should be surveilled. Inmates can make a recorded phone call in the Lieutenant's Office, where it is documented in a monitored logbook. In the SHU, Correctional Officers are not permitted to give inmates phone calls, but a Unit Team Member or the Chaplain can take the inmate to the Lieutenant's office to make a call. [REDACTED] is not briefed on phone calls in the SHU, generally.

[REDACTED] wholeheartedly emphasized that he and his staff at MCC did their best to supervise, safeguard and ensure the protection of EPSTEIN and all inmates effectively. His staff is aware of the seriousness of the investigation into EPSTEIN'S death.

MCC NEW YORK
NEW YORK, NY
Daily Assignment Roster

Saturday July 27, 2019

Page 1

Post	Split Shift	2 00:00 - 08:00	3 06:00 - 14:00	6 07:00 - 15:00 8 08:00 - 16:00	9 12:00 - 20:00 10 14:00 - 22:00	12 16:00 - 00:00
OPS LT						
ACT LT						
SHU LT						
SIS TECH #1						
PHONE MONITOR						
SEARCH OFFICER						
LOBBY						
CONTROL #1						
CONTROL #2						
INTERNAL						
INTERNAL #2						
ATTY CONF						
UNIT 2						
UNIT 3						
5 NORTH						
5 SOUTH						
7 NORTH						
7 SOUTH						
9 NORTH						
SHU #1						
SHU #2						
SHU #3						
SHU #4						
10 SOUTH #1						
10 SOUTH #2						
11 NORTH						
11 SOUTH						
11 SOUTH #2						
OSP #1						
SANITATION OFF						
VISIT #1						
VISIT #2						
VISIT #3						
****Special Assignments****						
LOBBY #2						

26/2019 11:58:18 PM

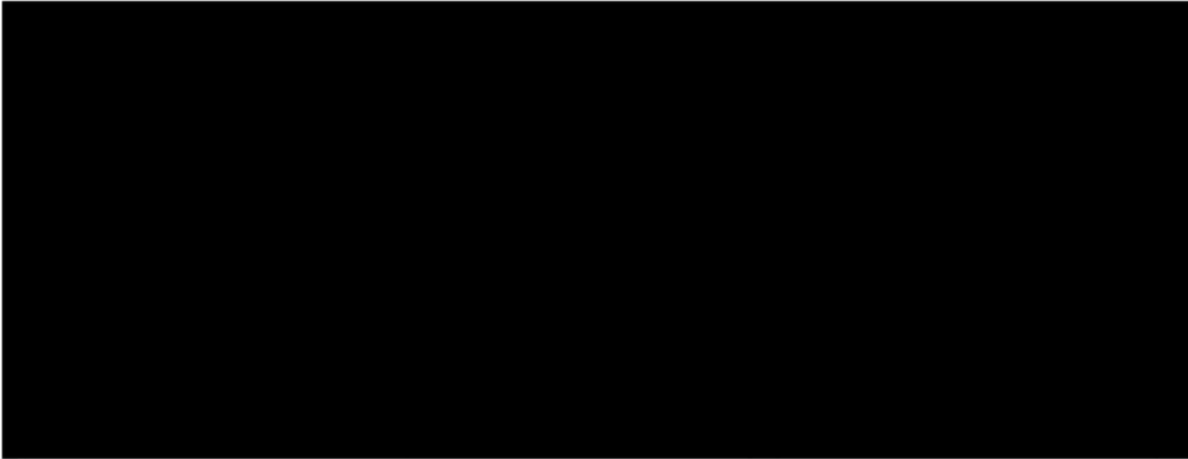
EFTA00039978

PHONE RM
STAFF SEARCH
MELENDEZ 1
MELENDEZ 2



****Back Page Categories****

DAY OFF



SICK LEAVE

From: "[REDACTED] (USANYS)" <[REDACTED]>

To: "[REDACTED] (USANYS)" <[REDACTED]>, "[REDACTED] (USANYS)" <[REDACTED]>

Cc: "[REDACTED] (USANYS)" <[REDACTED]>

Subject: 2019.09.09 Letter to OCME.v1.docx

Date: Mon, 09 Sep 2019 17:47:35 +0000

Attachments: 2019.09.09_Letter_to_OCME.v1.docx

Chiefs- please see attached and let us know if you have any edits. OCME asked us to ask them to withhold this letter and our prior letter from disclosure, too. We plan to send this by COB. Thanks.

From: [REDACTED] >

To: "[REDACTED] (USANYS)" <[REDACTED]>

Subject: Re: Things Going on This Week

Date: Tue, 10 Sep 2019 00:50:24 +0000

This sounds great! It was great to meet you today as well and I would love to come to everything Tuesday and Thursday. Unfortunately this week I have meetings for [REDACTED] so I won't be able to be there Friday, but could be going forward. I'll see you tomorrow morning!

[REDACTED]

On Mon, Sep 9, 2019 at 7:53 PM [REDACTED] (USANYS) <[REDACTED]> wrote:

Hey –

Nice meeting you earlier today. So here are some things that are going on this week:

- Tomorrow at 12:30: interview relating to the Epstein investigation.

[REDACTED]

- Friday at 12:00: another interview of an inmate relating to the Epstein investigation.

I'll keep you posted as additional things are added. [REDACTED]
[REDACTED]. See you tomorrow.

[REDACTED]

[REDACTED]

Assistant United States Attorney

United States Attorney's Office

Southern District of New York

One [St. Andrew's Plaza](#)

[New York, New York 10007](#)

Tel: [REDACTED]



From: [REDACTED] <[REDACTED]>
To: "[REDACTED] (USANYS)" <[REDACTED]>
Subject: Re: Things Going on This Week
Date: Tue, 10 Sep 2019 14:47:16 +0000

Yes! I might you to let me in on the floor, I still haven't gotten my PIV from [REDACTED]. But I'm hoping to get it this week. I'll come up now.

On Tue, Sep 10, 2019 at 10:43 AM [REDACTED] (USANYS) <[REDACTED]> wrote:
Want to come by my office now? [REDACTED]

On Sep 10, 2019, at 10:25 AM, [REDACTED] <[REDACTED]> wrote:

Good morning! I'm in a little early in case you were free to talk a little more about what I can help you with. I am about to go through security and can either come by your office or head to the library.

[REDACTED]

On Mon, Sep 9, 2019 at 8:50 PM [REDACTED] <[REDACTED]> wrote:

This sounds great! It was great to meet you today as well and I would love to come to everything Tuesday and Thursday. Unfortunately this week I have meetings for [REDACTED] so I won't be able to be there Friday, but could be going forward. I'll see you tomorrow morning!

[REDACTED]

On Mon, Sep 9, 2019 at 7:53 PM [REDACTED] (USANYS) <[REDACTED]> wrote:

Hey –

Nice meeting you earlier today. So here are some things that are going on this week:

- Tomorrow at 12:30: interview relating to the Epstein investigation.

- Friday at 12:00: another interview of an inmate relating to the Epstein investigation.

I'll keep you posted as additional things are added. You shouldn't feel any obligation to go to everything – some of it will probably be boring. See you tomorrow.

[REDACTED]

[REDACTED]

Assistant United States Attorney

United States Attorney's Office

Southern District of New York

One [St. Andrew's Plaza](#)

[New York, New York 10007](#)

Tel: [REDACTED]

[REDACTED]

From: [REDACTED]

[REDACTED]

Cc: "[REDACTED]" >

Subject: RE: Epstein File - Redactions

Date: Wed, 11 Sep 2019 14:19:37 +0000

Thank you very much; I really appreciate your quick turnaround on this. Please keep me informed whenever you determine that you no longer wish this material to remain redacted, and always feel free to reach out with questions or concerns.

Florence Hutner
General Counsel
Office of Chief Medical Examiner
421 E. 26th Street
New York, NY 10016
Tel: [REDACTED]

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From: [REDACTED] >

Sent: Wednesday, September 11, 2019 10:08 AM

To: Hutner, Florence (OCME) <fhutner@ocme.nyc.gov>

Cc: [REDACTED] >

Subject: RE: Epstein File - Redactions

Florence,

Attached is a revised version of the OCME report and file; we have removed the redaction from the sentence you requested.

We request that you notify recipients of this file that: "At the request of the USAO-SDNY, we have redacted references to material or information obtained by OCME from federal authorities and related to an ongoing criminal investigation."

Please let me know if you have any further questions. Thank you.

From: Hutner, Florence (OCME) <fhutner@ocme.nyc.gov>

Sent: Tuesday, September 10, 2019 1:50 PM

To: [REDACTED] >

Subject: RE: Epstein File - Redactions

Thanks; I'll call shortly.

Florence Hutner
General Counsel
Office of Chief Medical Examiner
421 E. 26th Street
New York, NY 10016

Tel: [REDACTED]

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From: [REDACTED] >
Sent: Tuesday, September 10, 2019 1:42 PM
To: Hutner, Florence (OCME) <fhutner@ocme.nyc.gov>
Cc: [REDACTED] >
Subject: RE: Epstein File - Redactions

I'll be at my desk this afternoon, if you want to call. [REDACTED]. Thanks.

From: Hutner, Florence (OCME) <fhutner@ocme.nyc.gov>
Sent: Tuesday, September 10, 2019 11:38 AM
To: [REDACTED] >
Cc: [REDACTED] >
Subject: RE: Epstein File - Redactions

Please let me know when you have a moment to talk; we have one concern about the redactions you have requested. Thank you.

Florence Hutner
General Counsel
Office of Chief Medical Examiner
421 E. 26th Street
New York, NY 10016
Tel: [REDACTED]

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From: Hutner, Florence (OCME)
Sent: Tuesday, September 10, 2019 8:49 AM
To: [REDACTED] >
Cc: [REDACTED] >
Subject: RE: Epstein File - Redactions

Thanks for this full response!

Florence Hutner
General Counsel
Office of Chief Medical Examiner
421 E. 26th Street
New York, NY 10016
Tel: [REDACTED]

The information contained in this e-mail communication may be confidential and/or legally privileged and is for the use of the intended recipient only. If you are not the intended recipient, or an authorized employee or an agent responsible for delivering it to the intended recipient, the dissemination, distribution or reproduction of this communication or its contents (including any attachments) is prohibited.

From: [REDACTED] >
Sent: Tuesday, September 10, 2019 8:40 AM
To: Hutner, Florence (OCME) <fhutner@ocme.nyc.gov>
Cc: [REDACTED] >
Subject: Re: Epstein File - Redactions

Thanks Florence. In response to your questions:

1. Correct, please withhold the 360 scan as well as the scene photos.
2. We do not intend to request that these materials be permanently withheld. We will advise you when we no longer request that certain aspects, or any aspects, of the report be withheld.
3. Understood, and we appreciate your willingness to let us know if and when that happens so that we can seek appropriate process to protect our ongoing investigation.
4. I responded separately with respect to the MCC voicemail.

Please let us know if you have any further questions. Thanks.

On Sep 10, 2019, at 7:54 AM, Hutner, Florence (OCME) <fhutner@ocme.nyc.gov> wrote:

Thanks Rebekah. I will review this and get back to you.

It looks like your request concerning scene photographs includes photographs taken by OCME. By extension, I expect that you are also including the 360 scan. Please confirm if this reading is correct.

Please also confirm whether your request is intended to last only for the duration of any federal investigation, or whether you intend the restriction on disclosure to be permanent.

I note also that, if we receive a court order (including a court-ordered subpoena) for the unredacted file, we will notify you so that you can seek to preserve any investigative confidentiality, but we comply with court orders.

Additionally, please let me know if you will handle the voicemail I received from MCC and forwarded to you yesterday, or if I should return that call.

Thank you.

Florence Hutner
General Counsel
Office of Chief Medical Examiner
421 E. 26th Street
New York, NY 10016
Tel: [REDACTED]

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From: [REDACTED] >
Sent: Monday, September 09, 2019 5:41 PM
To: Hutner, Florence (OCME) <fhutner@ocme.nyc.gov>
Cc: [REDACTED] >
Subject: Epstein File - Redactions

<image001.jpg>

<image002.gif>

This is a secure message.

[Click here](#) by 2019-09-19 21:41 UTC to read your message.
After that, open the attachment.

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EFTA00039988

From: "[REDACTED] (USANYS)" <[REDACTED]>

To: "[REDACTED] (USANYS)" <[REDACTED]>, "[REDACTED] (USANYS)" <[REDACTED]>

Subject: Fwd: [REDACTED]

Date: Thu, 12 Sep 2019 11:57:01 +0000

See below from [REDACTED] attorney. Is it fair to say that, at this time, the government is not interested in further interviewing him on the Epstein matter?

[REDACTED]
Assistant United States Attorney
Southern District of New York
One Saint Andrew's Plaza
New York, New York 10007
Tel [REDACTED]
[REDACTED]

Sent from my iPhone

Begin forwarded message:

From: "Javier A. Solano" [REDACTED]
Date: September 12, 2019 at 7:32:55 AM EDT
To: "[REDACTED] (USANYS)" <[REDACTED]>
Subject: Re: [REDACTED]

[REDACTED]

I'm going to visit [REDACTED] today. Please let me know if the Government is still interested in interviewing him regarding the Epstein matter.

Solano

Law Offices of Javier A. Solano, PLLC

[REDACTED]

Empire State Building
350 Fifth Avenue, Suite 5900
New York, New York 10118
T: [REDACTED]
F: [REDACTED]

The Hub
507 Willis Avenue
Bronx, New York 10455
T: [REDACTED]
F: [REDACTED]

On Sep 3, 2019, at 6:42 PM, [REDACTED] (USANYS) <[REDACTED]> wrote:

There is an ICE detainer.

From: Javier A. Solano [REDACTED]
Sent: Tuesday, September 3, 2019 6:34 PM
To: [REDACTED] (USANYS) <[REDACTED]>
Subject: Re: [REDACTED]

Great. Let me know as soon as you find out.

Law Offices of Javier A. Solano, PLLC

www.SolanoLegal.com

Empire State Building
350 Fifth Avenue, Suite 5900
New York, New York 10118
T: [REDACTED]
F: [REDACTED]

The Hub
507 Willis Avenue
Bronx, New York 10455
T: [REDACTED]
F: [REDACTED]

On Sep 3, 2019, at 6:05 PM, [REDACTED] (USANYS) <[REDACTED]> wrote:

Javier, I'll check with the agents now.

From: Javier A. Solano [REDACTED]
Sent: Tuesday, September 3, 2019 6:01 PM
To: [REDACTED] (USANYS) <[REDACTED]>
Subject: Re: [REDACTED]

[REDACTED]

Do you happen to know if [REDACTED] still has an immigration hold? He believes that the hold was lifted. If it's not lifted then there's no reason to even consider a bail application.

Solano

Law Offices of Javier A. Solano, PLLC

www.SolanoLegal.com

Empire State Building
350 Fifth Avenue, Suite 5900
New York, New York 10118
T: [REDACTED]
F: [REDACTED]

The Hub
507 Willis Avenue
Bronx, New York 10455
T: [REDACTED]
F: [REDACTED]

On Aug 29, 2019, at 7:32 AM, [REDACTED] (USANYS) <[REDACTED]> wrote:

Great. Let's do 2:00 p.m. on Tuesday, September 3. We'll have Mr. [REDACTED] brought to our office. The prosecutors handling the proffer will be [REDACTED] and [REDACTED]

From: Javier A. Solano [REDACTED]
Sent: Wednesday, August 28, 2019 10:59 PM
To: [REDACTED] (USANYS) <[REDACTED]>
Subject: Re: [REDACTED]

Let's do Tuesday afternoon.

Law Offices of Javier A. Solano, PLLC

www.SolanoLegal.com

Empire State Building
350 Fifth Avenue, Suite 5900
New York, New York 10118
T: [REDACTED]
F: [REDACTED]

The Hub
507 Willis Avenue

EFTA00039991

Bronx, New York 10455

T: [REDACTED]

F: [REDACTED]

On Aug 27, 2019, at 4:45 PM, [REDACTED] (USANYS) <[REDACTED]> wrote:

No worries. Can you do next week on Tuesday afternoon or Thursday morning?

From: Javier A. Solano <[REDACTED]>

Sent: Tuesday, August 27, 2019 4:40 PM

To: [REDACTED] (USANYS) <[REDACTED]>

Cc: [REDACTED]

Subject: Re: [REDACTED]

[REDACTED]

The jury went overnight again so unfortunately I will not be available tomorrow. We have to reschedule the proffer.

My sincere apologies.

Javier

Law Offices of Javier A. Solano, PLLC

www.SolanoLegal.com

Empire State Building

350 Fifth Avenue, Suite 5900

New York, New York 10118

T: [REDACTED]

F: [REDACTED]

The Hub

507 Willis Avenue

Bronx, New York 10455

T: [REDACTED]

F: [REDACTED]

On Aug 27, 2019, at 9:43 AM, Javier A. Solano <[REDACTED]> wrote:

[REDACTED]

We summed up on Monday and I was expecting a verdict yesterday but the jury is still deliberating. I hope and expect y
to get a verdict today, but I will let you know for sure at the end of the day.

Thanks,
Javier.

Law Offices of Javier A. Solano, PLLC

www.SolanoLegal.com

Empire State Building
350 Fifth Avenue, Suite 5900
New York, New York 10118

T: [REDACTED]

F: [REDACTED]

The Hub
507 Willis Avenue
Bronx, New York 10455

T: [REDACTED]

F: [REDACTED]

On Aug 26, 2019, at 12:04 PM, [REDACTED] (USANYS) <[REDACTED]> wrote:

Hello,

Are we confirmed for a proffer session with [REDACTED] on Wednesday, August 28, at 12:00? We can do the proffer session at our office.

Best Regards,

[REDACTED]

Assistant United States Attorney
United States Attorney's Office
Southern District of New York

EFTA00039993

One Saint Andrew's Plaza
New York, New York 10007

Tel: [REDACTED]

From: "[REDACTED]"

[REDACTED]

Subject: Jeffrey Epstein lost interest in pregnant victim, made her recruit underage girls

Date: Thu, 12 Sep 2019 14:41:06 +0000

<https://nypost.com/2019/09/12/jeffrey-epstein-lost-interest-in-pregnant-victim-made-her-recruit-underage-girls/>

[REDACTED]

[REDACTED]

U.S. Attorney's Office for the
Southern District of New York

Tel. [REDACTED]

From: "[REDACTED] (USMS)" <[REDACTED]>

To: "[REDACTED] (USMS)" <[REDACTED]>, "[REDACTED] (USMS)" <[REDACTED]>

Subject: FW: Freedom of Information Act Request: USMS files re: Jeffrey Epstein

Date: Thu, 12 Sep 2019 20:37:55 +0000

Attachments: Jeffrey20Epstein20Dead20in20Suicide20at20Manhattan20Jail2C20Officials20Say20-20The2.pdf

Inline-Images: ~WRD000.jpg

The initial Epstein request came in via email, with the attached.

[REDACTED]
Associate General Counsel
FOIA/PA Officer
Office of General Counsel
U.S. Marshals Service
Office: [REDACTED]
Cell: [REDACTED]
Email: [REDACTED]

From: 78799-06306786@requests.muckrock.com [mailto:78799-06306786@requests.muckrock.com]

Sent: Tuesday, August 13, 2019 12:04 PM

To: USMS FOIA

Subject: Freedom of Information Act Request: USMS files re: Jeffrey Epstein

Department of Justice, United States Marshals
FOIA Office
U.S. Marshals Service
Washington, MD 20530-1000

August 13, 2019

To Whom It May Concern:

Pursuant to the Freedom of Information Act, I hereby request the following records:

All records concerning JEFFREY EPSTEIN, a federal prisoner who is listed by Bureau of Prisons as having had Register Number: 76318-054. The date of birth listed on Wikipedia is January 20, 1953.

Please conduct a search of all US Marshals Service systems of records for both main-file records and cross-reference records for all relevant names, agencies and companies.

US Marshals Service systems of records of interest include (but are not limited to) the Internal Affairs System; U.S. Marshals Service Prisoner Processing and Population Management-Prisoner Tracking System; Warrant Information Network (WIN); Witness Security Files Information System; and Inappropriate Communications-Threat Information System.

If any potentially responsive records have been destroyed and/or transferred to NARA, then I request copies of the destruction or transfer slips as well as any other documentation relating to, mentioning or describing said transfer or destruction, to include but not be limited to confirmation that USMS has no other copies of said records.

EFTA00039996

Epstein is widely reported to have died 8/10/2019 in New York City (see attached article from the NY Times). Records concerning Epstein as a subject should thus be assumed exempt from the FOIA Exemption 6, 7(C) and the Privacy Act.

The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

In the event that there are fees, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 20 business days, as the statute requires.

Sincerely,

T. McElwee

Filed via MuckRock.com

E-mail (Preferred): 78799-06306786@requests.muckrock.com

Upload documents directly: [https://accounts.muckrock.com/accounts/login/?](https://accounts.muckrock.com/accounts/login/?url_auth_token=AAAZ6rZK1XZF1MJeYl_ZqLeFDJE%3A1hxZCR%3AD_RLs3zuz_0fxFPzkSUOSDvgNNk&next=https%3A%2F%2Fwww.muckrock.com%2Faccounts%2Flogin%2F%3Fnext%3D%252Faccounts%252Fagency_login%252Fdepartment-of-justice-united-states-marshals-49%252Fusms-files-re-jeffrey-epstein-78799%252F%253Femail%253Dusms.foia%252540usdoj.gov)

[url_auth_token=AAAZ6rZK1XZF1MJeYl_ZqLeFDJE%3A1hxZCR%3AD_RLs3zuz_0fxFPzkSUOSDvgNNk&next=https%3A%2F%2Fwww.muckrock.com%2Faccounts%2Flogin%2F%3Fnext%3D%252Faccounts%252Fagency_login%252Fdepartment-of-justice-united-states-marshals-49%252Fusms-files-re-jeffrey-epstein-78799%252F%253Femail%253Dusms.foia%252540usdoj.gov](https://accounts.muckrock.com/accounts/login/?url_auth_token=AAAZ6rZK1XZF1MJeYl_ZqLeFDJE%3A1hxZCR%3AD_RLs3zuz_0fxFPzkSUOSDvgNNk&next=https%3A%2F%2Fwww.muckrock.com%2Faccounts%2Flogin%2F%3Fnext%3D%252Faccounts%252Fagency_login%252Fdepartment-of-justice-united-states-marshals-49%252Fusms-files-re-jeffrey-epstein-78799%252F%253Femail%253Dusms.foia%252540usdoj.gov)

Is this email coming to the wrong contact? Something else wrong? Use the above link to let us know.

For mailed responses, please address (see note):

MuckRock News

DEPT MR 78799

411A Highland Ave

Somerville, MA 02144-2516

PLEASE NOTE: This request is not filed by a MuckRock staff member, but is being sent through MuckRock by the above in order to better track, share, and manage public records requests. Also note that improperly addressed (i.e., with the requester's name rather than "MuckRock News" and the department number) requests might be returned as undeliverable.

REPORT OF INVESTIGATION

Page 1 of 1

1. FID: 10127184 CASE: CC-1900-0613-7745-G	2. DATE OF REPORT: 08/19/2019	3. REPORTED BY: [REDACTED] AT: W00
4. SUBJECT NAME: EPSTEIN,JEFFREY EDWARD		
5. MERGED FIDs:		
6. TYPE OF REPORT: ☐ REPORT OF ELECTRONIC INTERCEPTION ☐ COLLATERAL LEAD ☐ WITNESS INTERVIEW ☐ ADMINISTRATIVE SUBPOENA ☐ CS REQUEST ☐ ARREST/CLOSE ☐ INTELLIGENCE UPDATE ☒ MEMORANDUM TO FILE (USM11 1359934) ☐ DUE DILIGENCE ☐ OTHER		
7. HOURS WORKED:		

On August 10, 2019 EPSTEIN committed suicide while in custody in New York. On August 12, 2019 Senior Inspector (SI) [REDACTED] spoke with the US Virgin Islands AUSA's office in regards to this case. Based upon the above information all parties agreed this case would be dropped.

As such the search warrant for EPSTEINs phone was cancelled, the MLAT requests for all countries were cancelled, and all investigative activities were cancelled.

This case is now closed.

(b) (6), (b) (7)(C), (b) (7)(F)

8. SIGNATURE (Name and Title) [REDACTED] Criminal Investigator	9. DATE 08/19/2019 2:07 PM EDT	12. DISTRIBUTION ___ DISTRICT ___ HEADQUARTERS ___ OTHER
10. APPROVED (Name and Title) [REDACTED] Chief Inspector	11. DATE 08/21/2019 9:42 AM EDT	

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08/27/2019 11:43 AM EDT

EFTA00039998

U.S. Department of Justice
United States Marshals Service

REPORT OF INVESTIGATION

Page 1 of 2

1. FID: 10127184 CASE: CC-1900-0613-7745-G	2. DATE OF REPORT: 07/10/2019	3. REPORTED BY: [REDACTED] AT: W00
4. SUBJECT NAME: EPSTEIN,JEFFREY EDWARD		
5. MERGED FIDs:		
6. TYPE OF REPORT: ☐ REPORT OF ELECTRONIC INTERCEPTION ☐ COLLATERAL LEAD ☒ WITNESS INTERVIEW (USM11 1342335) ☐ ADMINISTRATIVE SUBPOENA ☐ CS REQUEST ☐ ARREST/CLOSE ☐ INTELLIGENCE UPDATE ☐ MEMORANDUM TO FILE ☐ DUE DILIGENCE ☐ OTHER		
7. HOURS WORKED:		

On July 10, 2019 at approximately 6:15 pm Senior Inspector (SI) [REDACTED] contacted [REDACTED] by phone. SI [REDACTED] introduced himself as a Deputy United States Marshal and explained he received her phone number from [REDACTED] a Miami Herald reporter. SI [REDACTED] explained Ms. [REDACTED] told him she would be expecting his call. [REDACTED] stated she did not recognize the phone number but suspected that that call was for.

SI [REDACTED] explained why he was calling and asked [REDACTED] if she had a few moments. She stated yes.

SI [REDACTED] asked her to start from the beginning with what she had said to Ms. [REDACTED] regarding Jeffrey EPSTEIN. [REDACTED] stated that she is an Air Traffic Controller and that Jeffrey EPSTEIN parks his plane at the base of the control tower at the airport when he arrives. [REDACTED] stated she has seen EPSTEIN get off the plane with young girls. [REDACTED] recalled two specific times with the first being two girls who appeared to be eleven (11) to twelve (12) years old with white skin. [REDACTED] stated another time a girl looked to be sixteen (16) maybe seventeen (17) or eighteen (18) and appeared to be of mixed race. [REDACTED] stated the dates of these occurrences were between June/ July of 2018 through November of 2018. [REDACTED] stated she started [REDACTED] in April of 2018 and was fully qualified after May so it was after that. She only worked [REDACTED] for about one (1) year.

SI [REDACTED] asked how far away was EPSTEIN from the control tower when they observed him. [REDACTED] stated maybe fifty (50) yards but they were using binoculars to look.

SI [REDACTED] asked if they get the flight plans? [REDACTED] stated that they typically get the out bound but not the inbound flight plans.

SI [REDACTED] asked what information is in the flight plans? [REDACTED] stated ATC information and route.

8. SIGNATURE (Name and Title) [REDACTED] Criminal Investigator	9. DATE 07/10/2019 6:42 PM EDT	12. DISTRIBUTION ☐ DISTRICT ☐ HEADQUARTERS ☐ OTHER
10. APPROVED (Name and Title) [REDACTED] Chief Inspector	11. DATE 07/11/2019 10:35 AM EDT	

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REPORT OF INVESTIGATION

Page 2 of 2

1. FID: 10127184 CASE: CC-1900-0613-7745-G	2. DATE OF REPORT: 07/10/2019	3. REPORTED BY: [REDACTED] AT: W00
4. SUBJECT NAME: EPSTEIN,JEFFREY EDWARD		
5. MERGED FIDs:		

SI [REDACTED] asked if it shows who is on the flight and where they are from? [REDACTED] stated no.

SI [REDACTED] asked if there was anyone else who would be willing to talk to him that worked with [REDACTED]. [REDACTED] stated there might be another person and that she would check and call SI [REDACTED] back.

SI [REDACTED] thanked [REDACTED] for her time and concluded the phone call.

REPORT OF INVESTIGATION

Page 1 of 1

1. FID: 10127184 CASE: CC-1900-0613-7745-G	2. DATE OF REPORT: 06/13/2019	3. REPORTED BY: [REDACTED] AT: W00
4. SUBJECT NAME: EPSTEIN,JEFFREY EDWARD		
5. MERGED FIDs:		
6. TYPE OF REPORT: ☐ REPORT OF ELECTRONIC INTERCEPTION ☐ COLLATERAL LEAD ☐ WITNESS INTERVIEW ☐ ADMINISTRATIVE SUBPOENA ☐ CS REQUEST ☐ ARREST/CLOSE ☐ INTELLIGENCE UPDATE ☐ MEMORANDUM TO FILE ☐ DUE DILIGENCE ☒ OTHER: (APPROVAL FOR INVESTIGATION)		
7. HOURS WORKED:		

On June 30, 2008 Jeffrey Epstein (DOB: 01/20/1953) was convicted of F.S 796.03 in the state of Florida for procuring a person under the age of 18 for prostitution and sentenced to 13 months incarceration. As a result of this conviction EPSTEIN must register as a sex offender.

On March 15, 2019 EPSTEIN went to the US Virgin Island Department of Justice located on the island of St. Thomas and spoke in person to the Sex Offender Registry Coordinator. During this meeting EPSTEIN signed the Notification of Duty to Report travel.

On 3/19/2019 the USMS received notification from the US Virgin Islands Sex Offender Registry that EPSTEIN was traveling to France from 3/19/2019 through 03/29/2019 via his private jet (N212JE). No other countries are listed on the notification form. According to a public website that tracks flight activity EPSTEIN traveled on March 22, 2019 to Vienna, Austria and on March 27, 2019 to Monaco. These countries are not listed on the notification form.

Based on the above information, an MS04 investigation has been initiated to determine if EPSTEIN is in violation of 18 USC 2250 (b) regarding his failure to report international travel.

8. SIGNATURE (Name and Title) [REDACTED] Criminal Investigator	9. DATE 06/13/2019 2:01 PM EDT	12. DISTRIBUTION ☐ DISTRICT ☐ HEADQUARTERS ☐ OTHER
10. APPROVED (Name and Title) [REDACTED] Chief Inspector	11. DATE 06/13/2019 3:46 PM EDT	

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REPORT OF INVESTIGATION

Page 1 of 1

1. FID: 10127184 CASE: CC-1900-0613-7745-G	2. DATE OF REPORT: 08/05/2019	3. REPORTED BY: [REDACTED] AT: W00
4. SUBJECT NAME: EPSTEIN,JEFFREY EDWARD		
5. MERGED FIDs:		
6. TYPE OF REPORT: ☐ REPORT OF ELECTRONIC INTERCEPTION ☐ COLLATERAL LEAD ☐ WITNESS INTERVIEW ☐ ADMINISTRATIVE SUBPOENA ☐ CS REQUEST ☐ ARREST/CLOSE ☐ INTELLIGENCE UPDATE ☒ MEMORANDUM TO FILE (USM11 1353667) ☐ DUE DILIGENCE ☐ OTHER		
7. HOURS WORKED:		

On July 14, 2019 Senior Inspector (SI) [REDACTED] and [REDACTED] traveled to the US Virgin Islands (STT) to work on an operation involving International Megans Law (IML). While there SI [REDACTED] met with the AUSA's office to discuss this case.

- On July 17, 2019 SI [REDACTED] spoke with the AUSA [REDACTED] in regards to submitting an MLAT request to the countries of France, Monaco, Austria, and Morocco. AUSA [REDACTED] stated he would submit the requests.

- On or about July 19, 2019 SI [REDACTED] and [REDACTED] spoke with Customs and Border Protection (CBP) in regards to obtaining flight logs and records for EPSTEINs private plane. CBP stated these could be obtained through the pilots themselves or maybe the FAA.

- On July 22, 2019 SI [REDACTED] submitted a search warrant to AUSA [REDACTED] for EPSTEINs phone number that he listed he can be reached on during international travel. SI [REDACTED] is hoping to gain historical information that may provide insight to countries EPSTEIN visited while on international travel.

- On August 5, 2019 SI [REDACTED] received information from the FAA in regards to flight plan histories. This information reveals numerous more Countries of international travel by EPSTEINs jet. It will be investigated further.

The investigation continues..

8. SIGNATURE (Name and Title) [REDACTED] Criminal Investigator	9. DATE 08/05/2019 12:23 PM EDT	12. DISTRIBUTION ☐ DISTRICT ☐ HEADQUARTERS ☐ OTHER
10. APPROVED (Name and Title) [REDACTED] Chief Inspector	11. DATE 08/06/2019 1:21 PM EDT	

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REPORT OF INVESTIGATION

Page 1 of 2

1. FID: 10127184 CASE: CC-1900-0613-7745-G	2. DATE OF REPORT: 06/24/2019	3. REPORTED BY [REDACTED] AT: W00
4. SUBJECT NAME: EPSTEIN,JEFFREY EDWARD		
5. MERGED FIDs:		
6. TYPE OF REPORT: ☐ REPORT OF ELECTRONIC INTERCEPTION ☐ COLLATERAL LEAD ☒ WITNESS INTERVIEW (USM11 1335209) ☐ ADMINISTRATIVE SUBPOENA ☐ CS REQUEST ☐ ARREST/CLOSE ☐ INTELLIGENCE UPDATE ☐ MEMORANDUM TO FILE ☐ DUE DILIGENCE ☐ OTHER		
7. HOURS WORKED:		

On June 24, 2019 at approximately 1100 hours Supervisory Inspector (SI) [REDACTED] and Senior Inspector (SI) [REDACTED] met with Investigative reporter [REDACTED] (Miami Herald) at the Moonlite Diner located in Hollywood, Florida.

During the interview SI [REDACTED] asked Ms. [REDACTED] if she knew of anyone who may have information in regards to EPSTEIN. Ms. [REDACTED] stated she has an informant who worked at the airport and the informant stated she has seen EPSTEIN walking with girls under the age of 18 within the last seven months. Her informant has witnessed the girls board a helicopter at his island (Little St. James) and fly to the airport to board EPSTEIN's airplane. SI [REDACTED] asked if the informant had any records of this. Ms. [REDACTED] stated the informant may have text messages that she sent to her friends upon witnessing the events. This informant now lives in [REDACTED], [REDACTED]. Ms. [REDACTED] gave her phone number to SI [REDACTED].

Ms. [REDACTED] stated she also knows a female who was employed for one week at EPSTEIN's residence before being released by him. This informant's boyfriend is still employed by EPSTEIN and Ms. [REDACTED] will reach out to see if he will speak with SI [REDACTED].

Ms. [REDACTED] also stated [REDACTED] is one of EPSTEIN's disgruntled attorneys who may have information, but requested SI [REDACTED] not contact him yet.

Ms. [REDACTED] stated [REDACTED] owned a modeling company and helped recruit girls for EPSTEIN.

Ms. [REDACTED] stated [REDACTED] was the Police Chief during the original EPSTEIN investigation and may be able to provide more insight concerning their investigation with EPSTEIN.

8. SIGNATURE (Name and Title) [REDACTED] Criminal Investigator	9. DATE 06/24/2019 1:05 PM EDT	12. DISTRIBUTION ☐ DISTRICT ☐ HEADQUARTERS ☐ OTHER
10. APPROVED (Name and Title) [REDACTED] Chief Inspector	11. DATE 06/28/2019 11:15 AM EDT	

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REPORT OF INVESTIGATION

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1. FID: 10127184 CASE: CC-1900-0613-7745-G	2. DATE OF REPORT: 06/24/2019	3. REPORTED BY: [REDACTED] AT: W00
4. SUBJECT NAME: EPSTEIN,JEFFREY EDWARD		
5. MERGED FIDs:		

The interview concluded at approximately noon and SI [REDACTED] told Ms [REDACTED] he would be in touch.

Case continues...

REPORT OF INVESTIGATION

Page 1 of 1

1. FID: 10127184 CASE: CC-1900-0108-2923-G	2. DATE OF REPORT: 01/08/2019	3. REPORTED BY [REDACTED] AT: W00
4. SUBJECT NAME: EPSTEIN,JEFFREY EDWARD		
5. MERGED FIDs:		
6. TYPE OF REPORT: ☐ REPORT OF ELECTRONIC INTERCEPTION ☐ COLLATERAL LEAD ☐ WITNESS INTERVIEW ☐ ADMINISTRATIVE SUBPOENA ☐ CS REQUEST ☐ ARREST/CLOSE ☐ INTELLIGENCE UPDATE ☐ MEMORANDUM TO FILE ☐ DUE DILIGENCE ☒ OTHER: (APPROVAL FOR INVESTIGATION)		
7. HOURS WORKED:		

Jeffrey EPSTEIN was referred to the USMS IML Unit by the US Attorney's Office for the Southern District of New York as a convicted Sex Offender from the state of Florida who travels frequently Internationally and may have not reported all his International travel as required by International Megan's Law.

EPSTEIN was convicted in 2008 in the state of Florida of procuring a person under the age of 18 for prostitution, sentenced to 13 months incarceration and is required for life as a sex offender in the state of Florida.

EPSTEIN is currently registered as a sex offender in the US Virgin Islands as his primary address and he has secondary addresses in Florida, NY, New Mexico, and Paris France. In NY state, EPSTEIN is classified as a Level 3 sex offender (highest-risk) with a lifetime registrant requirement.

Investigation reveals EPSTEIN travels Internationally quite frequently using private planes and may have failed to report all his International travel. Based upon this information, a MS04 investigation has been initiated to determine if EPSTEIN is in Violation of Title 18 Section 2250(b) regarding his failure to report International travel.

End of Report

8. SIGNATURE (Name and Title) [REDACTED] Senior Inspector	9. DATE 01/08/2019 10:56 AM EST	12. DISTRIBUTION ☐ DISTRICT ☐ HEADQUARTERS ☐ OTHER
10. APPROVED (Name and Title) [REDACTED] Chief Inspector	11. DATE 01/08/2019 3:51 PM EST	

UNITED STATES MARSHALS SERVICE
THIS REPORT IS THE PROPERTY OF THE UNITED STATES MARSHALS SERVICE. NEITHER
IT NOR ITS CONTENT MAY BE DISSEMINATED OUTSIDE THE AGENCY TO WHICH LOANED.

08/27/2019 11:41 AM EDT

EFTA00040005

U.S. Department of Justice
United States Marshals Service

Personal History of Defendant

Taken into Federal custody by the following:

- ☒ Street Arrest (not from a correctional/detention facility)
☐ Custodial Arrest (from a correctional/detention facility)

- ☒ Writ Used (Must provide copy of writ) *ARREST WARRANT*
☐ Prior Federal Arrest or Safekeeper - Register #: _____
☐ Safekeeper Location: _____

BIOGRAPHICAL INFORMATION

Last Name: *EPSTEIN* First Name: *Jeffrey* Middle Name: *EDWARD*
Sex: ☒ M ☐ F ☐ Transgender Pregnant: ☐ Y ☒ N Race: *W*
Hair: *GRY* Eyes: *BLUE* Height: *6'11"* Weight: *185* DOB: *1/20/53*
City of Birth: *BROOKLYN* State/Country of Birth: *NY* Citizenship: *Yes*
FBI #: _____ State ID#: _____ Alien #: _____ SSN: _____ *b (6), (b) (7)(C)*
Resident Address/City/State/ZIP: *9471st, New York, NY 10021*
Home Phone: _____ Cell Phone: _____ Marital Status: *S*

COURT CASE

Agency: *NY FBI* Agency ORI: *NYFBI NY 00*
Agent Last Name: *(b) (6), (b) (7)(C), (b) (7)(F)* First Name: *(b) (6), (b) (7)(C), (b) (7)(F)*
Agent Phone #: *(b) (6), (b) (7)(C), (b) (7)(F)* Arrest Date: *7/6/19*
Location/Facility of Arrest: *TEETERBORO AIRPORT, BERGIN COUNTY, New Jersey*
Court Docket #: _____ CR _____ AUSA(s) Assigned: _____

OFFENSE

NCIC Code	Charge Description	Title/Code
	<i>SEX TRAFFICKING CONSPIRACY</i>	<i>18 USC 371</i>

Known Detainers/Warrants: ☒ N ☐ Y - Agency: _____ (Must provide a copy of any detainers)

CAUTIONS AND MEDICAL

Long Term Medical Conditions (e.g., heart problems, diabetes, asthma, tuberculosis, HIV, AIDS, hepatitis, etc.): ☒ N ☐ Y

Psychiatric/Emotionally Disturbed (e.g., mental health concerns, suicidal, etc.): ☒ N ☐ Y

Injuries/Medical Ailments/Post-Op Recovery: ☒ N ☐ Y

Do the above conditions require:

Medical attention? ☒ N ☐ Y

Medication? ☒ N ☐ Y

Medical clearance by a licensed physician: ☒ N ☐ Y

Is Defendant under the influence of drugs or alcohol: ☒ N ☐ Y

Languages - English: ☐ N ☒ Y ☐ Limited

Other Language: ☒ N ☐ Y - List: _____

Security Cautions:

- | | | |
|---|---|--|
| ☒ Current or former military | ☐ Current or former LE corrections | ☐ Current or former intelligence |
| ☒ Current or former public official | ☐ Assault on LE/corrections | ☐ SAM subject or candidate |
| ☐ Eligible for diplomatic immunity | ☐ Leadership role | ☐ Separation needs (Describe below) |
| ☐ Threat to witness (Describe below) | ☐ CI (Describe below) | ☐ Other (Describe below) |

LAW ENFORCEMENT SENSITIVE

Remarks:

ALIASES

ALIAS Last Name	ALIAS First, MI	Remark	Date of Birth	SSN	State Driver's License

ASSOCIATES / CO-DEFENDANTS / RELATIVES / CHILDREN / SIGNIFICANT OTHER

Relationship	Last Name	First, MI	Register #	Resident Address, City, State, ZIP Code	Phone

MARKS

Scar/Mark/Tattoo (Specify)	Location	Description
N/A		

VEHICLES

Vehicle Year	Make	Model	Color(s)	Vehicle Style	State and Plate #	Registration Date	VIN

LICENSES

License Number	License State

MISCELLANEOUS NUMBERS

Miscellaneous Number	Type (Select from dropdown menu or type below)	Remarks (e.g., Issuing State or Country, etc.)

OCCUPATIONS

Occupation: <u>SELF EMPLOYED</u>	Company/Employer Name:	
Employment Address: <u>VIRGEN ISLANDS</u>		
Start Date:	End Date:	Point of Contact:

FINANCIAL

Bank Name	Account Type	Account #	Branch Address	Phone #

MILITARY

Branch	Rank	Entry Date	Discharge Date	Discharge Type	Military Occupation	Remarks
N/A						

REMARKS

Additional Information/Remarks/Continuation:

PROFILE

Defendant Risks: *Requires remarks below

- | | |
|--|---|
| ☐ Escaper | ☐ Planned Murder |
| ☐ Organized Crime* | ☐ Protected Witness |
| ☐ International Terrorist | ☐ Domestic Terrorist |
| ☐ Gang Member* | ☐ Significant Criminal History |
| ☐ Multiple Defendants | ☐ Death Penalty Case |

Sex Offender:

- | | |
|-------------------------------------|---|
| ☐ Arrest | ☐ Conviction |
| ☐ Registered | ☐ Registration Violation |

Criminal History (Select from dropdown menu or type offense below)	Arrest (#)	Conviction (#)
-		

Remarks (e.g., name of gang or criminal organization, etc.):

N/A

☐ Money Launderer
 ☐ Kingpin
 ☐ Violent Offender

INTERNET SOURCE

Internet Source	Remarks (e.g., email address, website address, username, etc.)

NOTICE TO ARRESTING AGENTS: As a courtesy, the USMS may temporarily hold an arrestee received by non-USMS personnel in the cellblock until the arresting agent(s) make arrangements for the prisoner's initial appearance before a United States Magistrate. A prisoner remains the responsibility of the arresting agency until remanded to the custody of the USMS by the courts. When a courtesy hold is allowed by the USMS to be housed in a USMS cellblock, a minimum of one agent from the arresting agency must be available to respond to the cellblock in order to address any issues with their prisoner (e.g., medical, disciplinary). If the arresting agency refuses to comply with USMS procedures, the courtesy hold may be refused. Meals are not provided by the USMS, and remain the responsibility of the arresting agent(s).

ARRESTEE PROCESSING CHECKLIST

For Arresting Officer Only

- ☒ USM-312 (Personal History of Defendant)
- ☒ Medical clearance (from licensed physician), if necessary
- ☒ Copy of Arrest Warrant, if issued
- ☐ Copy of Complaint, Information, or Indictment, if completed
- ☐ Copy of Detainer(s), if issued
- ☐ Copy of Writ, if applicable
- ☐ Correctional facility discharge papers, if applicable
- ☐ Correctional facility prisoner receipt, if applicable
- ☐ Correctional facility medical summary, if applicable

Prepared By - Name: Det (b) (6), (b) (7)(C), (b) (7)(F)

Agency: NYPD-NYFBI-TEO

Cell Phone: (b) (6), (b) (7)(C), (b) (7)(F) Date: 7/6/19

ARRESTEE PROCESSING CHECKLIST

For USMS Personnel Only

- ☐ Confirm all arresting agent documentation is completed and inserted into prisoner's file
- ☐ USM-312 (Personal History of Defendant) - reviewed, signed and dated by intake DI SM DEO
- ☐ USM-552 (Prisoner Medical Records Release Form) - completed, signed and dated by intake DI SM DEO
- ☐ USM-18 (Federal Prisoner Property Receipt) - completed, signed and dated by intake DI SM DEO
- ☐ USM-40-41 (Prisoner Remand) - inserted into prisoner's file
- ☐ USM-130 (Prisoner Custody Alert Notice), if applicable - inserted into prisoner's file
- ☐ FD-249 (Fingerprint Card) - printed and inserted into prisoner's file
- ☐ Prisoner Photograph (from Booking Package) - printed and inserted into prisoner's file

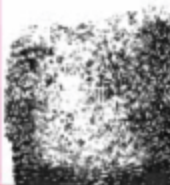
Reviewed By: (b) (6), (b) (7)(C), (b) (7)(F)

Badge #:

Date: 7/6/19

Fmly. member (brother)

(b) (6), (b) (7)(C)

STATE USAGE		STATE USAGE		STATE USAGE		STATE USAGE					
OFF SECOND		OFF SECOND		OFF SECOND		OFF SECOND					
SUBMISSION		APPROXIMATE CLASS		AMPUTATION		SCAR					
STATE USAGE		LAST NAME, FIRST NAME, MIDDLE NAME, SUFFIX									
		EPSTEIN, JEFFREY EDWARD									
SIGNATURE OF PERSON FINGERPRINTED		SOCIAL SECURITY NO.		LEAVE BLANK							
		[REDACTED] (b) (6) (7)(C)									
ALIAS/ALIASES											
LAST NAME, FIRST NAME, MIDDLE NAME, SUFFIX											
EPSTEIN, JEFFREY E											
FBI NO.	STATE IDENTIFICATION NO.	DATE OF BIRTH	MM	DO	YY	SEX	RACE	HEIGHT	WEIGHT	EYES	HAIR
[REDACTED]	[REDACTED]	01/20/1953				M	W	N72	185	BLU	BRO
1. R. THUMB		2. R. INDEX		3. R. MIDDLE		4. R. RING		5. R. LITTLE			
											
6. L. THUMB		7. L. INDEX		8. L. MIDDLE		9. L. RING		10. L. LITTLE			
											
LEFT FOUR FINGERS TAKEN SIMULTANEOUSLY		L. THUMB		R. THUMB		RIGHT FOUR FINGERS TAKEN SIMULTANEOUSLY					
											

CRIMINAL JUSTICE INFORMATION SERVICES DIVISION, CLARKSBURG, WV 26306

PRIVACY ACT OF 1974 (PL 93-579) REQUIRES THAT FEDERAL, STATE, OR LOCAL AGENCIES INFORM INDIVIDUALS WHOSE SOCIAL SECURITY NUMBER IS REQUESTED WHETHER SUCH DISCLOSURE IS MANDATORY OR VOLUNTARY, BASIS OF AUTHORITY FOR SUCH SOLICITATION, AND USES WHICH WILL BE MADE OF IT.

JUVENILE FINGERPRINT SUBMISSION YES ☐ TREAT AS ADULT YES ☐		DATE OF ARREST MM DD YY 07/08/2019		ORI CONTRIBUTOR ADDRESS REPLY YES ☐ DESIRED? ☒	
SEND COPY TO: (ENTER ORI)		DATE OF OFFENSE MM DD YY 07/08/2019		PLACE OF BIRTH (STATE OR COUNTRY) NY	
MISCELLANEOUS NUMBERS PP-566672615 PP-516923892 PP-469911707		SCARS, MARKS, TATTOOS, AND AMPUTATIONS		COUNTRY OF CITIZENSHIP US	
		RESIDENCE/COMPLETE ADDRESS 9 EAST 71ST NEW YORK		CITY NY 10021	
OFFICIAL TAKING FINGERPRINTS (NAME OR NUMBER) (b) (6), (b) (7)(C), (b) (7)(F)		LOCAL IDENTIFICATION/REFERENCE		PHOTO AVAILABLE? YES ☐ PALM PRINTS TAKEN? YES ☐	
EMPLOYER IF U.S. GOVERNMENT, INDICATE SPECIFIC AGENCY IF MILITARY, LIST BRANCH OF SERVICE AND SERIAL NO.				OCCUPATION BANKER	
CHARGE/CITATION 1 07/08/2019 3699-Sex Offense				DISPOSITION 1.	
2.				2.	
3.				3.	
ADDITIONAL				ADDITIONAL	
ADDITIONAL INFORMATION/BASIS FOR CAUTION				STATE BUREAU STAMP	

United States Marshals Service - LIMITED OFFICIAL USE
USM-129 Individual Custody/Detention Report



Name: EPSTEIN,JEFFREY EDWARD USMS Number: 76318-054 FID: 10127184

I. IDENTIFICATION DATA

USMS NUMBER: 76318-054		NAME: EPSTEIN,JEFFREY EDWARD		
ADDRESS: 9 EAST 71ST NEW YORK, NY 10021		PHONE: [REDACTED]		
DOB: 01/20/1953	AGE: 66	POB: BROOKLYN, NY		
SEX: M	RACE: W	HAIR: BRO	EYE: BLU	HEIGHT: 6'00" WEIGHT: 185
SSN: [REDACTED] (6, (b) (7)(C))	FBI NBR/UCN: [REDACTED]	ALIEN NBR:		
OTHER NUMBER	OTHER NUMBER TYPE	ISSUE DATE	EXP DATE	REMARK
[REDACTED]	Passport Number			
	Passport Number			US PASSPORT
	Originating Police or Identification Number			NY SID #
	Originating Police or Identification Number			
	Passport Number	03/08/2019	03/07/2029	US PASSPORT #
** SPECIAL CAUTIONS AND MEDICAL		REMARKS	SEPARATEE	
Mental Concerns		Suicidal Tendencies		
TB CLEARANCE STATUS		ASSESSMENT DATE	EXPIRED	
NOT CLEARED				
DNA TEST DATE	TAKEN?	DEPUTY	REMARKS/KIT #	
N/A	No	N/A	FBI ARREST	
DETAINER DATE	L/R	ACTIVE?	AGENCY	REMARK
//****		N		
PRISONER ALIAS		ALIAS REMARK		
EPSTEIN,JEFFREY E				

II. CUSTODY INFORMATION

Custody 1	CUSTODY START DATE: 07/08/2019	END DATE: 08/10/2019
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United States Marshals Service - LIMITED OFFICIAL USE
USM-129 Individual Custody/Detention Report



Name: EPSTEIN,JEFFREY EDWARD USMS Number: 76318-054 FID: 10127184

CUSTODY STATUS	OFFICE	START DATE:	END DATE	REMARK
WT-CASE-RESOLVE	054	07/08/2019	08/10/2019	
RL-SUICIDE	054	08/10/2019	08/10/2019	
COURT CASE 1	DISTRICT OFFICE	JUDGE	US ATTORNEY	DEFENSE ATTORNEY
19-CR-00490	NY/S 500 PEARL ST. (MANHATTAN)			
Arrests	ARREST DATE	ARRESTING AGENCY	ARREST LOCATION	WARRANT NUMBER
	07/08/2019	FEDERAL BUREAU OF INVESTIGATION		
Offenses	CODE	OFFENSE	REMARK	DISPOSITION
	3699	Sex Offense	18 USC 371 SEX TRAFFICKING CONSPIRACY	Other
COURT CASE STATUS	START DATE	END DATE	REMARK	
ARREST	07/08/2019	07/08/2019		
WT-TRIAL	07/08/2019	08/10/2019		
CASE-RESOLVED	08/10/2019	08/10/2019		
INST	INSTITUTION NAME	ADMIT	RELEASE	BOARDED ACTION OR DISPOSITION
NYM	MCC New York	07/08/2019	08/10/2019	33
TOTAL DAYS BOARDED 33 (0 BND, 0 MED)				

III. MEDICAL CONDITION/TREATMENT HISTORY

DATE SERVICE PROVIDED	VENDOR	SERVICE PROVIDED

U.S. Virgin Islands

DRIVER'S LICENSE

USA VI (b) (6), (b) (7)(C) Class A

JEFFREY E.

LITTLE ST. JAMES
ST THOMAS VI 00802

Sex M Height 6'0" Eyes BLU

DOB 1/20/1953

Expires 1/20/2024

ISSUED 3/6/2019

DL C-130000064330



Florida *The Sunshine State*

IDENTIFICATION CARD

(b) (6), (b) (7)(C)

JEFFREY E EPSTEIN

PALM BCH, FL 33480-4730

DOB: 01-20-1953 SEX: M HGT: 6-00

ISSUED: 06-21-2009

EXPIRES: 01-20-2018

943.0435, F.S.

P010905210033





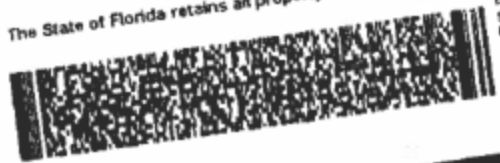
CLASS: A- Private | Endorsement(s)

REPLACEMENT LICENSE REQUIRED WITHIN 10 DAYS OF ADDRESS CHANGE OR
NAME CHANGE



www.bmv.vi.gov

The State of Florida retains all property rights herein.



Executive Director
Electra Theodoridis
Sandra C. Lamb
Director of Driver
P010605210033

www.hsmv.state.fl.us



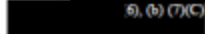
0180912204908283





 **UnitedHealthcare**

Health Plan (80840) 

Member ID: 

(b) (6), (b) (7)(C)

Group Number: **272605**

Member:
JEFFREY EPSTEIN

SOUTHERN TRUST COMPANY

Payer ID 87726

Office: \$20
UrgCare: \$75

ER: \$200
Spec: \$30

 **OPTUM**
Rx Bin: **610279**
Rx PCN: **9999**
Rx Grp: **UHC**

DOI - 0501

UnitedHealthcare Choice Plus
Underwritten by UnitedHealthcare Insurance Company

MEDICARE



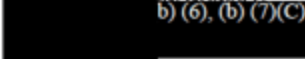
HEALTH INSURANCE

1-800-MEDICARE (1-800-633-4227)

NAME OF BENEFICIARY

JEFFREY E EPSTEIN

MEDICARE CLAIM NUMBER


(b) (6), (b) (7)(C)

SEX

MALE

IS ENTITLED TO

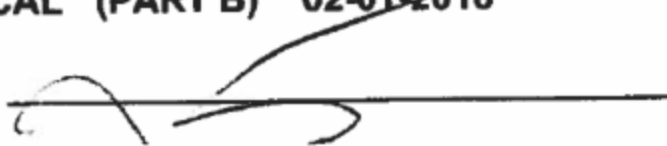
EFFECTIVE DATE

HOSPITAL (PART A) 01-01-2018

MEDICAL (PART B) 02-01-2018

SIGN

HERE





Printed: 12/17/16



Members: We're here to help. Check benefits, view claims, find a doctor, ask a question and more.

Web: www.myuhc.com
Email: Advocate4me@uhc.com
Phone: 800-782-3740
Mental Health: 800-842-2065

Call anytime to speak with a Nurse

Providers: 877-842-3210 or www.UnitedHealthcareOnline.com
Medical Claims: P.O. BOX 740800 ATLANTA GA 303740800
PR - MAPFRE - PO Box 70297, San Juan, PR 00936-8297

MAPFRE
Pharmacists: 888-290-5416

MultiPlan
Pharmacy Claims: OptumRx PO Box 29044 Hot Springs, AR 71903

1. Carry your card with you when you're away from home.
2. Let your hospital or doctor see your card when you need hospital, medical, or health services under **Medicare**.
3. Your card is good wherever you live in the United States.

WARNING: Issued only for use of the named beneficiary. Intentional misuse of this card is unlawful and may be punishable by fines, imprisonment, and other penalties. If found, drop in nearest U.S. Mail Box.



Centers for Medicare & Medicaid Services
Baltimore, MD 21244-1850

Form CMS-1966 (04/2015)

Questions about Medicare

- visit Medicare.gov
- call 1-800-MEDICARE (1-800-633-4227); (TTY: 1-877-486-2048)

Local Boaters Option

Registration Card

Name: Jeffrey Epstein

Number: BR- [REDACTED]



U.S. Customs and
Border Protection



MEDICARE HEALTH INSURANCE

Name/Nombre

JEFFREY E EPSTEIN

Medicare Number/Número de Medicare

[REDACTED] (6), (b) (7)(C)

Entitled to/Con derecho a

HOSPITAL (PART A)
MEDICAL (PART B)

Coverage starts/Cobertura empieza

01-01-2018
02-01-2018

To Report Arrival, Call:

Puerto Rico 1-877-529-6840

or (787) 729-6840

Port of St. Thomas (340) 774-6755

Port of St. John (340) 776-6741

Port of St. Croix (340) 773-1011

You may be asked to show this card when you get health care services. Only give your personal Medicare information to health care providers, your insurers, or people you trust who work with Medicare on your behalf. **WARNING:** Intentionally misusing this card may be considered fraud and/or other violation of federal law and is punishable by law.

Es posible que le pidan que muestre esta tarjeta cuando reciba servicios de cuidado médico. Solamente dé su información personal de Medicare a los proveedores de salud, sus aseguradores o personas de su confianza que trabajan con Medicare en su nombre. **¡ADVERTENCIA!** El mal uso intencional de esta tarjeta puede ser considerado como fraude y/u otra violación de la ley federal y es sancionada por la ley.

1-800-MEDICARE (1-800-633-4227 /
TTY: 1-877-486-2048); Medicare.gov



UNITED STATES DISTRICT COURT

for the

Southern District of New York

United States of America

v.

Jeffrey Epstein

Defendant

Case No.

19 CRIM 490

ARREST WARRANT

To: Any authorized law enforcement officer

YOU ARE COMMANDED to arrest and bring before a United States magistrate judge without unnecessary delay
(name of person to be arrested) Jeffrey Epstein
who is accused of an offense or violation based on the following document filed with the court:

- ☒ Indictment ☐ Superseding Indictment ☐ Information ☐ Superseding Information ☐ Complaint
☐ Probation Violation Petition ☐ Supervised Release Violation Petition ☐ Violation Notice ☐ Order of the Court

This offense is briefly described as follows:

Title 18, United States Code, Section 371 (sex trafficking conspiracy)

Title 18, United States Code, Sections 1591(a), (b)(2), and (2) (sex trafficking of minors)

Date: 07/02/2019

City and state: New York, NY


Issuing officer's signature

The Honorable Barbara Moses, U.S. Magistrate Judge
Printed name and title

Return

This warrant was received on (date) _____, and the person was arrested on (date) _____
at (city and state) _____.

Date: _____

Arresting officer's signature

Printed name and title



UNITED STATES DEPARTMENT OF JUSTICE
UNITED STATES MARSHALS SERVICE
SOUTHERN DISTRICT OF NEW YORK

ARRESTEE INFORMATION

Before any arrestee can be processed by the USMS any and all medical problems/conditions must be declared. This form must be completed for each arrestee and given to the responding USMS personnel before the arrestee will be received for processing.

Arrestee name: JEFFREY EPSTEIN

Does arrestee have a prior federal arrest? Circle: YES NO

If yes, please list the arrestee's USMS number.

If you cannot identify USMS number, please provide arrest information (IE: date, arresting agency, location)

Arrestee's representation for this days proceeding: (Circle) Legal Aid CJA retained MARTY WEINBERG

If legal aid, has arrestee met with counsel? Circle: YES NO

Does the arrestee have any current detainers? Circle: YES NO

If yes, please list:

Does arrestee have any long term medical condition or conditions (to include: heart problems, diabetes, asthma, tuberculosis, HIV, AIDS, hepatitis etc.)? Circle: YES NO

Does arrestee require medication/medical attention for this condition? Circle: YES NO

Do you, as the arresting agent, currently possess at least one days dosage of the arrestee's medication? Circle: YES NO

Explain:

Does arrestee have/display/complain of any other medical ailments (IE: broken bones, open wounds etc.)? Circle: YES NO

Does arrestee require medication/medical attention for this condition? Circle: YES NO

Do you, as the arresting agent, currently possess at least one days dosage of the arrestee's medication? Circle: YES NO

Explain:

Is the arrestee a drug addict/user? Circle: YES NO

If yes, does this require any special medical program (IE: methadone treatment)? Explain:

Do you, as the arresting agent, if applicable, possess a medical clearance/fit for confinement letter from a healthcare professional? Circle: YES NO (Please attach)

Please check when completed

ARRESTEE PROCESSING CHECKLIST

- ☒ 1. Have you completed any and all USMS paperwork.
To include: USMS 312 (Please fill out all forms as completely as possible)
- ☒ 2. Attached a photo of arrestee to paperwork.
- ☒ 3. Fingerprint cards
*1 for USMS file
*1 for the FBI for FPC classification
- ☒ 4. Filled out and attached the BOP-9.
- ☒ 5. Strip searched arrestee.
- ☒ 6. Taken any and all necessary photos.

ARRESTING AGENT:

AGENCY:

CONTACT # WHILE IN THIS BUILDING:

*****NOTE TO ALL ARRESTING AGENTS*****

Be advised, the USMS provides the **COURTESY** of holding and producing arrestee prior to the arrestee's magistrate court appearance. However, the arrestee is not considered a USMS prisoner until a U.S. Magistrate Judge **REMANDS** said arrestee to USMS custody. This means that as the arresting agent, you must be available at all times to respond to any and all matters concerning your arrestee, as you are the responsible party.

United States Marshals Service Policy and Procedures Manual 5.1-1.(a)

United States Marshals Service (USMS)
PRISONER MEDICAL RECORDS RELEASE FORM

INSTRUCTIONS. Section I is to be completed by the USMS Intake Officer. Sections II & III are to be completed by the prisoner. Section II may be completed by the USMS Intake Officer if the prisoner is unable or unwilling, but Section III must be signed by the prisoner. If prisoner refuses to sign, note that in the signature block. All refusals should be immediately reported to the Office of Interagency Medical Services, Prisoner Services Division. The completed USM form 552 is to be retained in the prisoner's files.

Section I - USMS Prisoner Information

1. Prisoner Name (Last, First, MI) EPSTEIN, Jeffrey, E.	2. USMS Prisoner 76318 054
3. District Name SDNY	4. District # 054
5. Custody Date (Mo/Day/Yr) 7/6/19	

Section II - Prisoner Personal Data And Medical Information

6. Date Of Birth (Mo/Day/Yr) 1-20-53	(b) (6), (b) (7)(C)
8. Medical Insurance Information	
A) Insurance Company Name UNITED health CARE	(b) (6), (b) (7)(C)
9. Name Of Your Physician Dr. (b) (6), (b) (7)(C)	C) Medicare /Medicaid Coverage? ☒ Yes ☒ No
10. Phone Number (b) (6), (b) (7)(C)	

Section III - Medical Consent And Records Release

I certify that the information I have provided above is true to the best of my knowledge.

I hereby authorize the United States Marshals Service to request, review, and have access to all medical records of care provided to me during the time that I am in the custody of that agency, and to all other medical records deemed necessary for the purposes of providing me with appropriate medical care, adjudicating medical bills for health care services provided to me while in the custody of the United States Marshals Service, and for infectious disease clearances.

Signature of Prisoner

Signature
(b) (6), (b) (7)(C), (b) (7)(F)

Date

Date

Original--Prisoner File
Copy to District File
Copy Upon Transfer

Form USM-552
1-8-0-0-0
Authorized 03-11

United States Marshals Service - LIMITED OFFICIAL USE
Booking Package Photos



USMS NUMBER: 76318-054
ORI: NYUSM0300

Date of Arrest: 07/08/2019
FBI
Number/UCN: [REDACTED]

Last Name: EPSTEIN
First Name: JEFFREY
Middle Name: EDWARD

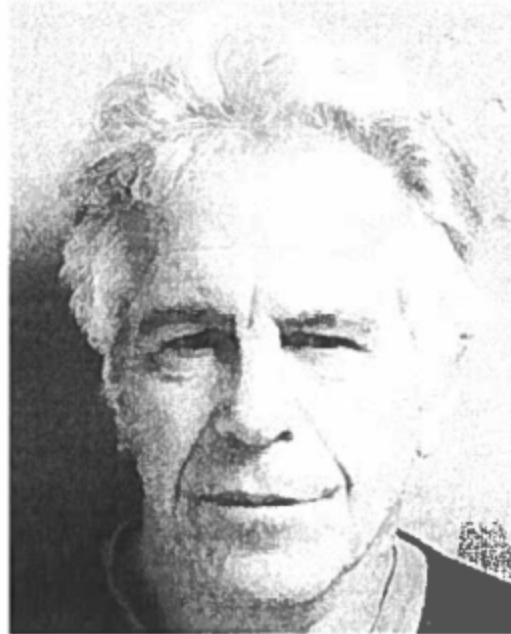
Sex: M
Race Code: W
DOB: 01/20/1953

Height: 6'00"
Weight: 185 LBS

Eye Color: BLU
Hair Color: BRO

View : FRONT

Date Taken: 07/08/2019



Limited Official Use



View : RIGHT

Date Taken: 07/08/2019



****Limited Official Use****

This information is the Property of the U.S. Marshals Service and Shall Not be Publicly Released or Disseminated Without U.S. Marshals Service Authority.
Page 2 of 3

EFTA00040024

United States Marshals Service - LIMITED OFFICIAL USE
Booking Package Photos



USMS NUMBER: 76318-054
ORI: NYUSM0300

Date of Arrest: 07/08/2019
FBI
Number/UCN: [REDACTED]

Last Name: EPSTEIN
First Name: JEFFREY
Middle Name: EDWARD

Sex: M
Race Code: W
DOB: 01/20/1953

Height: 6'00"
Weight: 185 LBS

Eye Color: BLU
Hair Color: BRO

Limited Official Use

POD Forms - Pages - USM552_1

U.S. Department of Justice
United States Marshals Service (USMS)

Form Date : 7/8/2019

PRISONER MEDICAL RECORDS RELEASE FORM

Document Number: 54-054-1911

INSTRUCTIONS:

Section I, II & III is to be completed by the USMS Intake Officers. Section III must be signed by the prisoner

Section I - USMS Prisoner Information

1. Prisoner Name (Last, First, MI): EPSTEIN,JEFFREY EDWARD	2. USMS Prisoner: 76318-054	3. Date of Birth (Mo/Day/Yy): 1/20/1953
4. District #: 54	5. District Name: Southern District of New York	6. Office: 500 PEARL ST.

Section II - Prisoner Personal And Medical Information

7. Medical Insurance Coverage? ☐

Medical Insurance Information

A) Insurance Company Name:

United Healthcare

C) Name of Your Physician:

Dr. Bruce Muscovitz

D) Phone Number:

8. Medicare/Medicaid Coverage? ☒ Yes ☐ No

Section III - Medical Consent And Records Release

I certify that the information I have provided above is true to the best of my knowledge

I hereby authorize the United States Marshals Service to request, review, and have access to all medical records of care provided to me during the time that I am in the custody of that agency, and to all other medical records deemed necessary for the purposes of providing me with appropriate medical care, adjudicating medical bills for health care services provided to me while in the custody of the United States Marshals Service, and for infectious disease clearances

Signature of Prisoner:



Date:

7/8/2019

Refused To Sign: ☐

USMS Representative:

[Redacted]

Date

7/8/2019

Form USM-552en.2.18

(b) (7)(E)

7/8/2019

EFTA00040026

POD Forms • Attach

U.S. Department of Justice
United States Marshals Service

Receipt Date 7/8/2019

Federal Prisoner Property Receipt

Receipt Number 54-054-2007

PRISONER INFORMATION

Prisoner Name (Last, First, MI):

EPSTEIN, JEFFREY EDWARD

USMS#:

75318-054

District #:

54

District Name:

Southern District of New York

Office

SDNY (NY)

PROPERTY DISPOSITION

☒ No Property ☐ Transfer ☐ Pick Up ☐ Mail ☐ Destroy

Signature of Prisoner:



Date:

2019-07-08

By my signature I acknowledge that I have no personal property to declare while in U.S. Marshals Service custody.

USMS representative:



Submit Successful and File Name is: EPSTEIN, JEFFREY EDWARD 2019-07-08T11:38:01-

Form USM-18en.3.18

(b) (7)(E)

7/8/2019

EFTA00040027

EFTA00040029

U.S. Department of Justice
United States Marshals Service**COPY****PROCESS RECEIPT AND RETURN**
*See "Instructions for Service of Process by U.S. Marshal"*PLAINTIFF
UNITED STATES OF AMERICACOURT CASE NUMBER
19 CR 490DEFENDANT
JEFFREY EPSTEINTYPE OF PROCESS
Notice of Lis Pendens

SERVE AT { NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC. TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN
 United States Marshal Service- Southern District of New York
 ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code)
 500 Pearl Street, New York, New York 10007

SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW

GEOFFREY S. BERMAN, U.S. ATTORNEY -SDNY
 UNITED STATES ATTORNEY'S OFFICE
 SOUTHERN DISTRICT OF NEW YORK
 ONE SAINT ANDREW'S PLAZA
 NEW YORK, NY 10007-1703

Number of process to be
served with this Form 285Number of parties to be
served in this caseCheck for service
on U.S.A.SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE (Include Business and Alternate Addresses,
All Telephone Numbers, and Estimated Times Available for Service):

Fold

Fold

Please execute the attached Notice of Lis Pendens in New York County, NY with regards to the property located at 9 East 71st
Street, New York, NY 10021, Block No. 1386, Lot No. 10 owned by Maple Inc.

Attention: (b) (6), (b) (7)(C), (b) (7)(E)

Signature of Attorney or Originator requesting service on behalf of: AUSA (b) (6), (b) (7)(C)

TELEPHONE NUMBER

DATE

212-637 (b) (6), (b) (7)(C) 7/8/19

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY- DO NOT WRITE BELOW THIS LINEI acknowledge receipt for the total
number of process indicated.
(Sign only for USM 285 if more
than one USM 285 is submitted)

Total Process

1

District of

Origin

No. 34

District to

Serve

No. 34

(b) (6), (b) (7)(C), (b) (7)(F)

Date

7/10/19

I hereby certify and return that I ☐ have personally served, ☐ have legal evidence of service, ☐ have executed as shown in "Remarks", the process described
on the individual, company, corporation, etc., at the address shown above on the on the individual, company/corporation, etc. shown at the address inserted below.☐ I hereby certify and return that I am unable to locate the individual, company, corporation, etc. named above (See remarks below)

Name and title of individual served (if not shown above)

☐ A person of suitable age and discretion
then residing in defendant's usual place
of abode

Address (complete only different than shown above)

Date 7/11/19

Time

☐ am
☐ pm

(b) (6), (b) (7)(C), (b) (7)(F)

Service Fee

\$65

Total Mileage Charges
(including endeavors)

Forwarding Fee

Total Charges

Advance Deposits

Amount owed to U.S. Marshal* or
(Amount of Refund*)

\$0.00

REMARKS:

7/11/19 Filed the Notice of Lis Pendens w/ the NY County Clerk

PRINT 5 COPIES

1. CLERK OF THE COURT

2. USMS RECORD

3. NOTICE OF SERVICE

4. BILLING STATEMENT*: To be returned to the U.S. Marshal with payment,
if any amount is owed. Please remit promptly payable to U.S. Marshal.

5. ACKNOWLEDGMENT OF RECEIPT

PRIOR EDITIONS MAY BE USED

19CR490-1 ✓

Form USM-285
Rev. 12/80

FILED
COUNTY CLERK
N.Y. COUNTY

2019 JUL 11 PM 3:48

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
:
UNITED STATES OF AMERICA
:
- v. -
:
JEFFREY EPSTEIN,
:
Defendant.
:
----- X

NOTICE IS HEREBY GIVEN that an action has been commenced in this Court upon the indictment of the above-named defendant and against the named property for forfeiture thereto, which premises are known generally as follows:

NEW YORK COUNTY, NEW YORK

9 East 71st Street, New York, New York 10021, in the Borough of Manhattan, City and State of New York, designated on the Tax Map of the City of New York for said Borough, as Block Number 1386, Lot Number 10, which is more particularly described in Schedule A attached hereto.

Please index this notice of pendency against the above-described property and also against the name of Maple, Inc.

Dated: New York, New York
July 8, 2019

GEOFFREY S. BERMAN

United States Attorney for the
Southern District of New York
United States of America

By: _____

Assistant United States Attorney
One Saint Andrew's Plaza
New York, New York 10007
Tel. No. _____

SCHEDULE A

ALL that certain plot, place or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at a point on the northerly side of 71st Street distant 225 feet easterly from the corner formed by the intersection of the easterly side of 5th Avenue with the northerly side of 71st Street; running

thence Easterly along the northerly side of 71st Street 50 feet;

thence Northerly and parallel with 5th Avenue 102 feet 2 inches to the center line of the block between 71st and 72nd Streets;

thence Westerly along the said center line and parallel with 71st Street 50 feet;

thence Southerly and parallel with 5th Avenue 102 feet 2 inches to the northerly side of 71st Street at the point or place of beginning.

New York County Clerk's Office
Paym 752375 07/11/2019 3:37p
Cashier TLRAINER Register # 2

Tr. 979002 \$35.00

Notice of Pendency (OC)-----
311234

RM 109B FILING NOTICE OF PENDENCY
#32 FOR SDNY SEALED INDICTMENT

Total: \$35.00

Check \$35.00

Order #5853

2019-07-11

ASSET

Address...: 9 East 71st Street
New York, NY 10021

Code.....: (b) (7)(E)
APN.....: BLOCK: 1386 LOT: 10
District..: NYS
Owner.....: MAPLE INC.
Type.....: SFR/SFD (1-4)
Status...: Off Market
Occupancy: Unknown
Value.....: \$0.00

Date of Act Giving Rise to Forfeiture...:
Preliminary Order of Forfeiture Date...:
Final Order of Forfeiture Date.....:

REQUESTER

Name.....: (b) (6), (b) (7)(C)
Email.....: (b) (6), (b) (7)(C)
District..: NYS
Date.....: 2019-07-11

ORDER

Ordered....: 2019-07-11
Completed...:
Sent.....:
Billed.....:

PRODUCTS AND SERVICES

Number.....: 3
Total.....: \$1,092.00
see next page for details

Signature: [REDACTED]

EFTA00040035

456987	\$451.00
Preâ€•Seizure Analysis	
549886	\$216.00
Residential Desktop Brokers Price Opinion	
570806	\$425.00
Preliminary Title Commitment - NTE	

MDP: (b) (7)(E)

MCK: (b) (7)(E)

Standard Form 1034 Revised October 1987 Department of the Treasury 1 TFM 4-2000		PUBLIC VOUCHER FOR PURCHASES AND SERVICES OTHER THAN PERSONAL				VOUCHER NO.							
U.S. DEPARTMENT, BUREAU, OR ESTABLISHMENT AND LOCATION United States Department of Justice United States Marshals Service 500 Pearl Street, Suite 400 New York, NY 10007				DATE VOUCHER PREPARED 07/10/2019		SCHEDULE NO.							
				CONTRACT NUMBER AND DATE		PAID BY: (b) (6), (b) (7)(C), (b) (7)(E)							
				REQUISITION NUMBER AND DATE									
PAYEE'S NAME AND ADDRESS New York County Clerk 60 Centre Street Room 109B New York, NY 10007						DATE INVOICE RECEIVED 07/10/2019							
						DISCOUNT TERMS							
						PAYEE'S ACCOUNT NUMBER							
SHIPPED FROM				TO		WEIGHT		GOVERNMENT BAL NUMBER					
NUMBER AND DATE OF ORDER		DATE OF DELIVERY OR SERVICE		ARTICLES OR SERVICES (Enter description, item number of contract or Federal supply schedule, and other information deemed necessary)		QUAN- TITY		UNIT PRICE COST PER		AMOUNT (1)			
				Notice of Pendency Filing Fee USA vs. Jeffrey Epstein 9 East 71st Street, New York, NY 10021 19 CR. 490 (b) (7)(E)		1		35		35.00			
(Use continuation sheet(s) if necessary)										TOTAL		35.00	
PAYMENT: ☐ PROVISIONAL ☐ COMPLETE ☐ PARTIAL ☐ FINAL ☐ PROGRESS ☐ ADVANCE		APPROVED FOR BY 2		EXCHANGE RATE =\$		DIFFERENCES							
		TITLE				Amount verified, correct for payment (Signature or initials)							
Pursuant to authority vested in me, I certify that this voucher is correct and proper for payment.													
07/10/2019 (Date)		(b) (6), (b) (7)(C) (Authorized Certifying Officer)				Administrative Officer (Title)							
ACCOUNTING CLASSIFICATION (b) (7)(E) \$35.00													
PAID BY													
CHECK NUMBER		ON ACCOUNT OF U.S. TREASURY				CHECK NUMBER		ON (Name of bank)					
CASH		DATE				PAYEE 3							
1. When stated in foreign currency, insert name of currency. 2. If the ability to certify and authority to approve are combined in one person, one signature only is necessary; otherwise the approving officer will sign in the space provided, over his official title. 3. When a voucher is receipted in the name of a company or corporation, the name of the person writing the company or corporate name, as well as the capacity in which he signs, must appear. For example: "John Doe Company, per John Smith, Secretary", or "Treasurer", as the case may be.										PER			
										TITLE			

Previous edition usable

NSN 7540-00-900-2234

PRIVACY ACT STATEMENT

The information requested on this form is required under the provisions of 31 U.S.C. 82b and 82c, for the purpose of disbursing Federal money. The information requested is to identify the particular creditor and the amounts to be paid. Failure to furnish this information will hinder discharge of the payment obligation.

EFTA00040037

U.S. Department of Justice
United States Marshals ServiceRequisition for Procurement of
Supplies, Service, and Equipment

1. REQUISITION NO.:	2. REQUESTED BY (Name/Title/Organization): (b) (6), (b) (7)(C) PMS/USMS	TEL NO.: (b) (6), (b) (7)(C)	3. DATE: 7/10/2019
---------------------	--	---------------------------------	-----------------------

4. ORGANIZATIONAL BUDGET OFFICER: I do hereby certify that funds are available and authorize an increase of funds but not to exceed \$100.00.

Stacy Rider Administrative Officer

NAME

TITLE

(b) (6), (b) (7)(C)

7/10/19

SIGNATURE

DATE

4a. APPROVAL by Component Head, U.S. Marshal or Designee:

(b) (6), (b) (7)(C) SDUSM

(b) (6), (b) (7)(C)

7/10/19

SIGNATURE

DATE

5. DELIVER TO:

U.S. Marshals Service-SDNY
500 Pearl Street, Suite 400
New York, NY 10007

- ☐ USMS Warehouse
2604 Jefferson Davis Highway, Alexandria, VA 22301
- ☐ Requisition forwarded to warehouse on (date):

6. SOURCES OF FUNDING:	6a. PROGRAM APPROVALS: (Attach before sending to applicable Contracting Office for processing)
☐ Appropriated	☐ Financial Services Division: Budget Execution Team (Any Requisition \$100K and over) Procurement Chief (Economy Act, Set-Asides, Bureau Proc. Chief as required by FAR/IAR)
☐ Other:	☐ Information Technology Division: IT (All hardware, software, services, regardless of value) Communications (FAX, Cellular, Pagers, Telephone Equip. & Maintenance)
☐ Reimbursement Auth. No.:	☐ Management Support Division: Motor Vehicles (Leases and Repairs) Publishing Services (Copies and Printing)
☐ AFF Case No.:	☐ Investigative Operations Division: ESU Equipment
☐ District Funds	☐ Tactical Operations Division: Wireless Communications Equip. (Radios, Repeaters, etc.)
☐ Non-Appropriated	☐ Director: Economy Act, J&As, HCA as required by FAR/IAR
	☐ Deputy Director: Non-Standard Ammo.; Weapons; Service, Backup, Tactical & Defensive; Aircraft Lease or Purchase, New Requirements Over \$100K
	☐ USM, CDUSM or AD: Paid Advertisements
	☐ OTHER:

7. STOCK NO. (a)	ITEM DESCRIPTION (b) Include Accounting Classification Structure (ACS) with each line item. Attach SOWs, Justifications & Other Documentation. Include make, model or salient characteristics.	OBJECT CLASS (c)	UNIT OF ISSUE (d)	QUANTITY (e)	UNIT COST (f)	TOTAL COST (g)
Notice of Pendency Filing Fee New York County Clerk	9 East 71st Street, New York, NY 10021 Lis Pendence Filing Fee USA vs. Jeffrey Epstein (b) (7)(E)	(b) (7)(E)	EA	1	\$35.00	\$35.00

8. ACCOUNTING CLASSIFICATION STRUCTURE:	9. DC NUMBER:	10. ESTIMATED COST:
Fiscal Year 2019	Fund Code (b) (7)(E)	TOTAL: \$35.00

(For acquisitions of property, \$25,000 or more per item)
APPROVED BY THE OFFICE OF PROPERTY MANAGEMENT:

SIGNATURE

DATE

VENDOR INFORMATION:

Suggested Source: New York County Clerk's Office

Contact:

Phone:

Date Ordered:

Date Received:

Order No.:

Real Property Sub-Task Order (USM-378) - New/Blank Form

[\[My Submissions\]](#) [\[Instructions\]](#)[Close](#) | [Print Preview](#)

U.S. Department of Justice
 United States Marshals Service
 USM-378 / Rev. 02/2019

Real Property Contract Sub-Task Order

INSTRUCTIONS: District Offices should use this form to procure Pre-Seizure products, Custody & Ongoing Maintenance and/or Disposition of real property assets. Submit completed form to AFD Real Property Unit (RPtaskorders@usms.doj.gov).

PART I: USMS CONTACT INFORMATION

Requester: External Email Address (@usdoj.gov): Phone: District:
 USMS (b) (6), (b) (7)(C) NY/S (D54) ☐

If your contact information needs to be updated, select the following link: [District Contacts](#) | [HQ Contacts](#) or send an email to RP.Task.Orders@usdoj.gov.

PART II: SUBJECT PROPERTY INFORMATION

Is CATS ID available?: Pre-Seizure Number (IEMS): CATS Asset ID: Court Case Number:
 No ☒ (b) (7)(E) 19 CR 490

Has an Indictment/Complaint been filed? Relation Back Doctrine Date: (= Date of Act Giving Rise to Forfeiture)
 Yes ☒ 01/01/2002

District Where Property Is Located: Street Address: APT/Unit No.: City:
 NYS ☒ 9 East 71st Street New York

County: State: ZIP: Country:
 New York NY ☒ 10021 United States of America ☒

APN: GPS Coordinates:
 BLOCK: 1386 LOT: 10

Owner's Name: Target/Defendant's Name:
 MAPLE INC. JEFFREY EPSTEIN

Occupancy Status: Property Classification:
 Unknown ☒ Single Family (1-4 units) ☒

Has any Pre-Seizure Package been ordered for this asset prior to today? No ☒
 (Note: If Pre-Seizure Package has not been ordered for this asset before, the "Product/Service(s) Requested" field will default to "Pre-Seizure Package")

Product/Service(s) Requested:
 Pre-Seizure Package [Preliminary Title Commitment, Valuation, and Analysis (Net Equity Worksheet+)] ☒

Comments:
 USA v. JEFFREY EPSTEIN
 Covert Desktop BPO/Appraisal

PART III: PROPERTY INFORMATION CHECKLIST

Note: The file size limit for all attachments per one form is 5MB. If you need to add more than one attachment per slot or need to attach a file size that is bigger than 5MB, please contact RP.Task.Orders@usdoj.gov.

A list of required documents will display based on the Product/Service(s) Requested.

There is no required document for Pre-Seizure Package.

PART IV: AFD REAL PROPERTY UNIT INITIAL REVIEW (AFD Use Only)

Assign to COR: 

 Close |  Print Preview

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
:
UNITED STATES OF AMERICA
:
- v. -
:
JEFFREY EPSTEIN, NOTICE OF PENDENCY
:
Defendant. 19 Cr. 490 (RMB)
:
----- X

NOTICE IS HEREBY GIVEN that an action has been commenced in this Court upon the indictment of the above-named defendant and against the named property for forfeiture thereto, which premises are known generally as follows:

NEW YORK COUNTY, NEW YORK

9 East 71st Street, New York, New York 10021, in the Borough of Manhattan, City and State of New York, designated on the Tax Map of the City of New York for said Borough, as Block Number 1386, Lot Number 10, which is more particularly described in Schedule A attached hereto.

2019 JUL 10 PM 6:49

Please index this notice of pendency against the above-described property and also against the name of Maple, Inc.

Dated: New York, New York
July 8, 2019

GEOFFREY S. BERMAN

United States Attorney for the
Southern District of New York
United States of America

By:



SCHEDULE A

ALL that certain plot, place or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Manhattan, City, County and State of New York, bounded and described as follows:

BEGINNING at a point on the northerly side of 71st Street distant 225 feet easterly from the corner formed by the intersection of the easterly side of 5th Avenue with the northerly side of 71st Street; running

thence Easterly along the northerly side of 71st Street 50 feet;

thence Northerly and parallel with 5th Avenue 102 feet 2 inches to the center line of the block between 71st and 72nd Streets;

thence Westerly along the said center line and parallel with 71st Street 50 feet;

thence Southerly and parallel with 5th Avenue 102 feet 2 inches to the northerly side of 71st Street at the point or place of beginning.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
UNITED STATES OF AMERICA :

- v. - :

JEFFREY EPSTEIN, :

Defendant. :

SEALED
INDICTMENT

19 Cr.

19 CRIM 490

----- x
COUNT ONE

(Sex Trafficking Conspiracy)

The Grand Jury charges:

OVERVIEW

1. As set forth herein, over the course of many years, JEFFREY EPSTEIN, the defendant, sexually exploited and abused dozens of minor girls at his homes in Manhattan, New York, and Palm Beach, Florida, among other locations.

2. In particular, from at least in or about 2002, up to and including at least in or about 2005, JEFFREY EPSTEIN, the defendant, enticed and recruited, and caused to be enticed and recruited, minor girls to visit his mansion in Manhattan, New York (the "New York Residence") and his estate in Palm Beach, Florida (the "Palm Beach Residence") to engage in sex acts with him, after which he would give the victims hundreds of dollars in cash. Moreover, and in order to maintain and increase his supply of victims, EPSTEIN also paid certain of his victims to recruit additional girls to be similarly abused by EPSTEIN. In

this way, EPSTEIN created a vast network of underage victims for him to sexually exploit in locations including New York and Palm Beach.

3. The victims described herein were as young as 14 years old at the time they were abused by JEFFREY EPSTEIN, the defendant, and were, for various reasons, often particularly vulnerable to exploitation. EPSTEIN intentionally sought out minors and knew that many of his victims were in fact under the age of 18, including because, in some instances, minor victims expressly told him their age.

4. In creating and maintaining this network of minor victims in multiple states to sexually abuse and exploit, JEFFREY EPSTEIN, the defendant, worked and conspired with others, including employees and associates who facilitated his conduct by, among other things, contacting victims and scheduling their sexual encounters with EPSTEIN at the New York Residence and at the Palm Beach Residence.

FACTUAL BACKGROUND

5. During all time periods charged in this Indictment, JEFFREY EPSTEIN, the defendant, was a financier with multiple residences in the continental United States, including the New York Residence and the Palm Beach Residence.

6. Beginning in at least 2002, JEFFREY EPSTEIN, the defendant, enticed and recruited, and caused to be enticed and

recruited, dozens of minor girls to engage in sex acts with him, after which EPSTEIN paid the victims hundreds of dollars in cash, at the New York Residence and the Palm Beach Residence.

7. In both New York and Florida, JEFFREY EPSTEIN, the defendant, perpetuated this abuse in similar ways. Victims were initially recruited to provide "massages" to EPSTEIN, which would be performed nude or partially nude, would become increasingly sexual in nature, and would typically include one or more sex acts. EPSTEIN paid his victims hundreds of dollars in cash for each encounter. Moreover, EPSTEIN actively encouraged certain of his victims to recruit additional girls to be similarly sexually abused. EPSTEIN incentivized his victims to become recruiters by paying these victim-recruiters hundreds of dollars for each girl that they brought to EPSTEIN. In so doing, EPSTEIN maintained a steady supply of new victims to exploit.

The New York Residence

8. At all times relevant to this Indictment, JEFFREY EPSTEIN, the defendant, possessed and controlled a multi-story private residence on the Upper East Side of Manhattan, New York, i.e., the New York Residence. Between at least in or about 2002 and in or about 2005, EPSTEIN abused numerous minor victims at the New York Residence by causing these victims to be recruited to engage in paid sex acts with him.

9. When a victim arrived at the New York Residence, she typically would be escorted to a room with a massage table, where she would perform a massage on JEFFREY EPSTEIN, the defendant. The victims, who were as young as 14 years of age, were told by EPSTEIN or other individuals to partially or fully undress before beginning the "massage." During the encounter, EPSTEIN would escalate the nature and scope of physical contact with his victim to include, among other things, sex acts such as groping and direct and indirect contact with the victim's genitals. EPSTEIN typically would also masturbate during these sexualized encounters, ask victims to touch him while he masturbated, and touch victims' genitals with his hands or with sex toys.

10. In connection with each sexual encounter, JEFFREY EPSTEIN, the defendant, or one of his employees or associates, paid the victim in cash. Victims typically were paid hundreds of dollars in cash for each encounter.

11. JEFFREY EPSTEIN, the defendant, knew that many of his New York victims were underage, including because certain victims told him their age. Further, once these minor victims were recruited, many were abused by EPSTEIN on multiple subsequent occasions at the New York Residence. EPSTEIN sometimes personally contacted victims to schedule appointments at the New York Residence. In other instances, EPSTEIN directed

employees and associates, including a New York-based employee ("Employee-1"), to communicate with victims via phone to arrange for these victims to return to the New York Residence for additional sexual encounters with EPSTEIN.

12. Additionally, and to further facilitate his ability to abuse minor girls in New York, JEFFREY EPSTEIN, the defendant, asked and enticed certain of his victims to recruit additional girls to perform "massages" and similarly engage in sex acts with EPSTEIN. When a victim would recruit another girl for EPSTEIN, he paid both the victim-recruiter and the new victim hundreds of dollars in cash. Through these victim-recruiters, EPSTEIN gained access to and was able to abuse dozens of additional minor girls.

13. In particular, certain recruiters brought dozens of additional minor girls to the New York Residence to give massages to and engage in sex acts with JEFFREY EPSTEIN, the defendant. EPSTEIN encouraged victims to recruit additional girls by offering to pay these victim-recruiters for every additional girl they brought to EPSTEIN. When a victim-recruiter accompanied a new minor victim to the New York Residence, both the victim-recruiter and the new minor victim were paid hundreds of dollars by EPSTEIN for each encounter. In addition, certain victim-recruiters routinely scheduled these

encounters through Employee-1, who sometimes asked the recruiters to bring a specific minor girl for EPSTEIN.

The Palm Beach Residence

14. In addition to recruiting and abusing minor girls in New York, JEFFREY EPSTEIN, the defendant, created a similar network of minor girls to victimize in Palm Beach, Florida, where EPSTEIN owned, possessed and controlled another large residence, i.e., the Palm Beach Residence. EPSTEIN frequently traveled from New York to Palm Beach by private jet, before which an employee or associate would ensure that minor victims were available for encounters upon his arrival in Florida.

15. At the Palm Beach Residence, JEFFREY EPSTEIN, the defendant, engaged in a similar course of abusive conduct. When a victim initially arrived at the Palm Beach Residence, she would be escorted to a room, sometimes by an employee of EPSTEIN's, including, at times, two assistants ("Employee-2" and "Employee-3") who, as described herein, were also responsible for scheduling sexual encounters with minor victims. Once inside, the victim would provide a nude or semi-nude massage for EPSTEIN, who would himself typically be naked. During these encounters, EPSTEIN would escalate the nature and scope of the physical contact to include sex acts such as groping and direct and indirect contact with the victim's genitals. EPSTEIN would also typically masturbate during these encounters, ask victims

to touch him while he masturbated, and touch victims' genitals with his hands or with sex toys.

16. In connection with each sexual encounter, JEFFREY EPSTEIN, the defendant, or one of his employees or associates, paid the victim in cash. Victims typically were paid hundreds of dollars for each encounter.

17. JEFFREY EPSTEIN, the defendant, knew that certain of his victims were underage, including because certain victims told him their age. In addition, as with New York-based victims, many Florida victims, once recruited, were abused by JEFFREY EPSTEIN, the defendant, on multiple additional occasions.

18. JEFFREY EPSTEIN, the defendant, who during the relevant time period was frequently in New York, would arrange for Employee-2 or other employees to contact victims by phone in advance of EPSTEIN's travel to Florida to ensure appointments were scheduled for when he arrived. In particular, in certain instances, Employee-2 placed phone calls to minor victims in Florida to schedule encounters at the Palm Beach Residence. At the time of certain of those phone calls, EPSTEIN and Employee-2 were in New York, New York. Additionally, certain of the individuals victimized at the Palm Beach Residence were contacted by phone by Employee-3 to schedule these encounters.

19. Moreover, as in New York, to ensure a steady stream of minor victims, JEFFREY EPSTEIN, the defendant, asked and enticed certain victims in Florida to recruit other girls to engage in sex acts. EPSTEIN paid hundreds of dollars to victim-recruiters for each additional girl they brought to the Palm Beach Residence.

STATUTORY ALLEGATIONS

20. From at least in or about 2002, up to and including in or about 2005, in the Southern District of New York and elsewhere, JEFFREY EPSTEIN, the defendant, and others known and unknown, willfully and knowingly did combine, conspire, confederate, and agree together and with each other to commit an offense against the United States, to wit, sex trafficking of minors, in violation of Title 18, United States Code, Section 1591(a) and (b).

21. It was a part and object of the conspiracy that JEFFREY EPSTEIN, the defendant, and others known and unknown, would and did, in and affecting interstate and foreign commerce, recruit, entice, harbor, transport, provide, and obtain, by any means a person, and to benefit, financially and by receiving anything of value, from participation in a venture which has engaged in any such act, knowing that the person had not attained the age of 18 years and would be caused to engage in a

commercial sex act, in violation of Title 18, United States Code, Sections 1591(a) and (b) (2).

Overt Acts

22. In furtherance of the conspiracy and to effect the illegal object thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

a. In or about 2004, JEFFREY EPSTEIN, the defendant, enticed and recruited multiple minor victims, including minor victims identified herein as Minor Victim-1, Minor Victim-2, and Minor Victim-3, to engage in sex acts with EPSTEIN at his residences in Manhattan, New York, and Palm Beach, Florida, after which he provided them with hundreds of dollars in cash for each encounter.

b. In or about 2002, Minor Victim-1 was recruited to engage in sex acts with EPSTEIN and was repeatedly sexually abused by EPSTEIN at the New York Residence over a period of years and was paid hundreds of dollars for each encounter. EPSTEIN also encouraged and enticed Minor Victim-1 to recruit other girls to engage in paid sex acts, which she did. EPSTEIN asked Minor Victim-1 how old she was, and Minor Victim-1 answered truthfully.

c. In or about 2004, Employee-1, located in the Southern District of New York, and on behalf of EPSTEIN, placed

a telephone call to Minor Victim-1 in order to schedule an appointment for Minor Victim-1 to engage in paid sex acts with EPSTEIN.

d. In or about 2004, Minor Victim-2 was recruited to engage in sex acts with EPSTEIN and was repeatedly sexually abused by EPSTEIN at the Palm Beach Residence over a period of years and was paid hundreds of dollars after each encounter. EPSTEIN also encouraged and enticed Minor Victim-2 to recruit other girls to engage in paid sex acts, which she did.

e. In or about 2005, Employee-2, located in the Southern District of New York, and on behalf of EPSTEIN, placed a telephone call to Minor Victim-2 in order to schedule an appointment for Minor Victim-2 to engage in paid sex acts with EPSTEIN.

f. In or about 2005, Minor Victim-3 was recruited to engage in sex acts with EPSTEIN and was repeatedly sexually abused by EPSTEIN at the Palm Beach Residence over a period of years and was paid hundreds of dollars for each encounter. EPSTEIN also encouraged and enticed Minor Victim-3 to recruit other girls to engage in paid sex acts, which she did. EPSTEIN asked Minor Victim-3 how old she was, and Minor Victim-3 answered truthfully.

g. In or about 2005, Employee-2, located in the Southern District of New York, and on behalf of EPSTEIN, placed a telephone call to Minor Victim-3 in Florida in order to schedule an appointment for Minor Victim-3 to engage in paid sex acts with EPSTEIN.

h. In or about 2004, Employee-3 placed a telephone call to Minor Victim-3 in order to schedule an appointment for Minor Victim-3 to engage in paid sex acts with EPSTEIN.

(Title 18, United States Code, Section 371.)

COUNT TWO
(Sex Trafficking)

The Grand Jury further charges:

23. The allegations contained in paragraphs 1 through 19 and 22 of this Indictment are repeated and realleged as if fully set forth within.

24. From at least in or about 2002, up to and including in or about 2005, in the Southern District of New York, JEFFREY EPSTEIN, the defendant, willfully and knowingly, in and affecting interstate and foreign commerce, did recruit, entice, harbor, transport, provide, and obtain by any means a person, knowing that the person had not attained the age of 18 years and would be caused to engage in a commercial sex act, and did aid and abet the same, to wit, EPSTEIN recruited, enticed, harbored, transported, provided, and obtained numerous

individuals who were less than 18 years old, including but not limited to Minor Victim-1, as described above, and who were then caused to engage in at least one commercial sex act in Manhattan, New York.

(Title 18, United States Code, Sections 1591(a),
(b)(2), and 2.)

FORFEITURE ALLEGATIONS

25. As a result of committing the offense alleged in Count Two of this Indictment, JEFFREY EPSTEIN, the defendant, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 1594(c)(1), any property, real and personal, that was used or intended to be used to commit or to facilitate the commission of the offense alleged in Count Two, and any property, real or personal, constituting or derived from any proceeds obtained, directly or indirectly, as a result of the offense alleged in Count Two, or any property traceable to such property, and the following specific property:

a. The lot or parcel of land, together with its buildings, appurtenances, improvements, fixtures, attachments and easements, located at 9 East 71st Street, New York, New York, with block number 1386 and lot number 10, owned by Maple, Inc.

Substitute Asset Provision

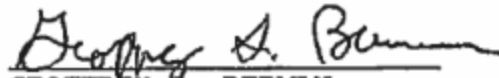
26. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with, a third person;
- (c) has been placed beyond the jurisdiction of the Court;
- (d) has been substantially diminished in value; or
- (e) has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to 21 U.S.C. § 853(p) and 28 U.S.C. § 2461(c), to seek forfeiture of any other property of the defendant up to the value of the above forfeitable property.

(Title 18, United States Code, Section 1594; Title 21, United States Code, Section 853(p); and Title 28, United States Code, Section 2461.)




GEOFFREY S. BERMAN
United States Attorney

Form No. USA-33s-274 (Ed. 9-25-58)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

JEFFREY EPSTEIN,

Defendant.

INDICTMENT

(18 U.S.C. §§ 371, 1591(a), (b) (2),
and 2)

GEOFFREY S. BERMAN
United States Attorney



United States Marshals Service
LIMITED OFFICIAL USE
Subject Report for EPSTEIN,JEFFREY EDWARD (FID 10127184)

Name : EPSTEIN,JEFFREY EDWARD
FID# : 10127184
USMS#: 76318054
Case Status : Active Subject is NOT in NCIC for USMS
Prisoner Status: Historical

Alias List

Seq. #	Alias
1	EPSTEIN,JEFFREY E

DOB List

Seq. #	Date of Birth	Place of Birth	NCIC Valid?
1	01/20/1953	NY - New York	Yes

Social Security Number List

Seq. #	Social Security Number
1	[REDACTED]
2	[REDACTED]

FBI Number/UCN List

Seq. #	FBI Number/UCN
1	[REDACTED]

Subject Description List

Seq. #	Eyes	Hair	Height	Weight	Skin	Race	Sex	NCIC Valid?
1	BLU	BRO	6'00"	185		W	M	Yes

Picture/Image List

Seq. #	District	Remark
3	054	
4	054	
1	W00	7-25-2013
2	W00	4-27-2018

USMS Number List (from PTS/PPMS)

Seq. #	USMS Number
1	76318-054

Miscellaneous Number List

Seq. #	Miscellaneous Number	Issue Date	Exp. Date	Remark
1	[REDACTED]			
2	[REDACTED]	03/08/2019	03/07/2029	US PASSPORT #
3	[REDACTED]			
4	[REDACTED]			US PASSPORT
5	[REDACTED]			NY SID #

Occupation List

Seq. #	Occupation	Begin	End
1	BANKER		
2	SOUTHERN TRUST COMPANY		
3	SELF EMPLOYED		

Subject Address List

Seq. #	Address	Start Date	End Date
1	9 EAST 71ST, NEW YORK, NY 10021 United States		
2	6100 RED HOOK QUARTER, B3 ST THOMAS, VI 00802		
3	9 E 71 ST, NEW YORK, NY 10021		

Subject Phone Number List

Seq. #	Type	Country Code	Phone Number	Extension	Remark	From	To
--------	------	--------------	--------------	-----------	--------	------	----

08/27/2019 11:37 AM EDT

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Subject Report for EPSTEIN,JEFFREY EDWARD (FID 10127184)

1 (212) 533-3739

Associate(s) of this Subject
FID# Associate Name Type
10925031 EPSTEIN,MARK BROTHER
State/Local ORI: Unknown

License Plate Information
Seq. # Plate Type State Year
1

Operator License List
Seq. # Operator License State Year
1 0000025874 VI 2024

Profile Information
Money Launderer No DEA - GDEP
"Kingpin" No DEA Violator (Historical)
Triggerlock Case No International Lookout Placed No
Violent Offender No

Criminal History					
Offense	Arrests	Convictions	Offense	Arrests	Convictions
Immigration	0	0	Homicide	0	0
Kidnapping	0	0	Rape/Sex Assault	1	1
Assault/Battery	0	0	Robbery	0	0
Burglary/Larceny	0	0	Narcotics	0	0
Weapons (Firearms)	0	0	Extortion	0	0
Weapons (Other)	0	0			
Forgery/Fraud	0	0			
Failure to Register (Sex Offense)	0	0	Failure to Comply (Sex Offense)	0	0

Sex Offenses
Arrest No Conviction No
Registered No Registration Violation No

Profile Remarks:LIFETIME SO REGISTRANT IN NY AND FLORIDA

Usmls exist for this fugitive.

Caution and Medical Conditions
Seq. # Code Description
1 MTL Mental Concerns

Other Documents
Upload Date Filename Description
09/26/2016 Epstein, Jeffrey.pdf Intl. Travel form
04/04/2017 Jeffrey Epstein.xml J Epstein Travel Document
07/03/2019 Epstein, Jeffrey.pdf Intl. Travel form
01/29/2019 EPSTEIN FDLE SO EPSTEIN FDLE SO Registration Documents part 1 of 2
Registration Documents
part 1 of 2.pdf
03/29/2017 Jeffrey Epstein.xml J Epstein Travel Document
03/27/2017 Jeffrey Epstein.xml J Epstein Travel Document
07/25/2016 Epstein, Jeffrey.pdf Intl. Travel form

United States Marshals Service
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Subject Report for EPSTEIN,JEFFREY EDWARD (FID 10127184)

01/08/2019	US Virgin Islands SOR EPSTEIN International Travel.pdf	US Virgin Islands SOR EPSTEIN International Travel
01/29/2019	EPSTEIN Information and Conviction Information.pdf	EPSTEIN Information and Conviction Information
02/28/2019	Jeffrey Epstein.pdf	J Epstein Travel Document
01/29/2019	EPSTEIN FDLE SO Registration Documents part 2 of 2.pdf	EPSTEIN FDLE SO Registration Documents part 2 of 2
01/08/2019	CBP Person Encounter List 2016-10-1 to 2019-1-4.pdf	CBP Person Encounter List 2016-10-1 to 2019-1-4
03/02/2018	Jeffrey Epstein.xml	J Epstein Travel Document
05/25/2018	Jeffrey Epstein.xml	J Epstein Travel Document

Associations

Associate: EPSTEIN,MARK
Reliability: Unknown
Validity: Unknown
Associate FID: 10925031
Relationship: BROTHER
Remarks:
State/Local ORI: Unknown
Case Number: n/a
Address: US

Social Details

Seq. #	Sexual Preference	Marital Status
1		Single

Case List

Request Case List

Case Number: 1600-0725-7296-R
Sealed Warrant?: No
Case Status: Closed
Originating District: S00 - HQTS - NSOTC

Close Information
Date Closed: 07/25/2016
Date Executed: 07/25/2016
Execution Code: Request Satisfied by USMS
Arrested in District: S00
To Be Prosecuted: U

Case Number: 1600-0926-8873-R
Sealed Warrant?: No
Case Status: Closed
Originating District: S00 - HQTS - NSOTC

Close Information
Date Closed: 09/26/2016
Date Executed: 09/23/2016

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Subject Report for EPSTEIN,JEFFREY EDWARD (FID 10127184)

Execution Code: Request Satisfied by USMS
Arrested in District: S00
To Be Prosecuted: U

Case Number: 1700-0327-5165-R
Sealed Warrant?: No
Case Status: Closed
Originating District: S00 - HQTS - NSOTC

Close Information
Date Closed: 03/27/2017
Date Executed: 03/27/2017
Execution Code: Request Satisfied by USMS
Arrested in District: S00
To Be Prosecuted: U

Case Number: 1700-0329-5243-R
Sealed Warrant?: No
Case Status: Closed
Originating District: S00 - HQTS - NSOTC

Close Information
Date Closed: 03/29/2017
Date Executed: 03/29/2017
Execution Code: Request Satisfied by USMS
Arrested in District: S00
To Be Prosecuted: U

Case Number: 1700-0404-5418-R
Sealed Warrant?: No
Case Status: Closed
Originating District: S00 - HQTS - NSOTC

Close Information
Date Closed: 04/04/2017
Date Executed: 04/04/2017
Execution Code: Request Satisfied by USMS
Arrested in District: S00
To Be Prosecuted: U

Case Number: 1800-0302-4407-R
Sealed Warrant?: No
Case Status: Closed
Originating District: S00 - HQTS - NSOTC

Close Information
Date Closed: 03/02/2018
Date Executed: 03/02/2018

United States Marshals Service
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Subject Report for EPSTEIN,JEFFREY EDWARD (FID 10127184)

Execution Code: Request Satisfied by USMS
Arrested in District: S00
To Be Prosecuted: U

Case Number: 1800-0525-7516-R
Sealed Warrant?: No
Case Status: Closed
Originating District: S00 - HQTS - NSOTC

Close Information
Date Closed: 05/25/2018
Date Executed: 05/24/2018
Execution Code: Request Satisfied by USMS
Arrested in District: S00
To Be Prosecuted: U

Case Number: 1900-0228-4145-R
Sealed Warrant?: No
Case Status: Closed
Originating District: S00 - HQTS - NSOTC

Close Information
Date Closed: 02/28/2019
Date Executed: 02/28/2019
Execution Code: Request Satisfied by USMS
Arrested in District: S00
To Be Prosecuted: U

Case Number: 1900-0620-7922-R
Sealed Warrant?: No
Case Status: Closed
Originating District: S00 - HQTS - NSOTC

Close Information
Date Closed: 06/20/2019
Date Executed: 06/19/2019
Execution Code: Request Satisfied by USMS
Arrested in District: S00
To Be Prosecuted: U

Case Number: 1900-0703-8325-R
Sealed Warrant?: No
Case Status: Closed
Originating District: S00 - HQTS - NSOTC

Close Information
Date Closed: 07/03/2019
Date Executed: 07/03/2019

United States Marshals Service
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Subject Report for EPSTEIN,JEFFREY EDWARD (FID 10127184)

Execution Code: Request Satisfied by USMS
Arrested in District: S00
To Be Prosecuted: U

Criminal Case List

Case Number: 1900-0108-2923-G
Case Status: Active
Lead Deputy: (b) (6), (b) (7)(C), (b) (7)(F)
Originating District: W00
Case Information
Agency: USMS
Investigative Type: MS04IML
Case Initiated: 01/08/2019
OCDE: No
Contact/Phone: [REDACTED]

Case Number: 1900-0613-7745-G
Case Status: Active
Lead Deputy: (b) (6), (b) (7)(C), (b) (7)(F)
Originating District: W00
Case Information
Agency: USMS
Investigative Type: MS04IML
Case Initiated: 06/13/2019
OCDE: No

REPORT OF INVESTIGATION

Page 1 of 1

1. FID: 10127184 CASE: CC-1900-0613-7745-G	2. DATE OF REPORT: 08/19/2019	3. REPORTED BY: [REDACTED] AT: W00
4. SUBJECT NAME: EPSTEIN,JEFFREY EDWARD		
5. MERGED FIDs:		
6. TYPE OF REPORT: ☐ REPORT OF ELECTRONIC INTERCEPTION ☐ COLLATERAL LEAD ☐ WITNESS INTERVIEW ☐ ADMINISTRATIVE SUBPOENA ☐ CS REQUEST ☐ ARREST/CLOSE ☐ INTELLIGENCE UPDATE ☒ MEMORANDUM TO FILE (USM11 1359934) ☐ DUE DILIGENCE ☐ OTHER		
7. HOURS WORKED:		

On August 10, 2019 EPSTEIN committed suicide while in custody in New York. On August 12, 2019 Senior Inspector (SI) [REDACTED] spoke with the US Virgin Islands AUSA's office in regards to this case. Based upon the above information all parties agreed this case would be dropped.

As such the search warrant for EPSTEINs phone was cancelled, the MLAT requests for all countries were cancelled, and all investigative activities were cancelled.

This case is now closed.

(b) (6), (b) (7)(C), (b) (7)(F)

8. SIGNATURE (Name and Title) [REDACTED] Criminal Investigator	9. DATE 08/19/2019 2:07 PM EDT	12. DISTRIBUTION __DISTRICT __HEADQUARTERS __OTHER____
10. APPROVED (Name and Title) [REDACTED] Chief Inspector	11. DATE 08/21/2019 9:42 AM EDT	

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REPORT OF INVESTIGATION

Page 1 of 2

1. FID: 10127184 CASE: CC-1900-0613-7745-G	2. DATE OF REPORT: 07/10/2019	3. REPORTED BY: [REDACTED] AT: W00
4. SUBJECT NAME: EPSTEIN,JEFFREY EDWARD		
5. MERGED FIDs:		
6. TYPE OF REPORT: ☐ REPORT OF ELECTRONIC INTERCEPTION ☐ COLLATERAL LEAD ☒ WITNESS INTERVIEW (USM11 1342335) ☐ ADMINISTRATIVE SUBPOENA ☐ CS REQUEST		
☐ ARREST/CLOSE ☐ INTELLIGENCE UPDATE ☐ MEMORANDUM TO FILE ☐ DUE DILIGENCE ☐ OTHER		
7. HOURS WORKED:		

On July 10, 2019 at approximately 6:15 pm Senior Inspector (SI) [REDACTED] contacted [REDACTED] by phone. SI [REDACTED] introduced himself as a Deputy United States Marshal and explained he received her phone number from [REDACTED] a Miami Herald reporter. SI [REDACTED] explained Ms. [REDACTED] told him she would be expecting his call. [REDACTED] stated she did not recognize the phone number but suspected that that call was for.

SI [REDACTED] explained why he was calling and asked [REDACTED] if she had a few moments. She stated yes.

SI [REDACTED] asked her to start from the beginning with what she had said to Ms. [REDACTED] regarding Jeffrey EPSTEIN. [REDACTED] stated that she is an Air Traffic Controller and that Jeffrey EPSTEIN parks his plane at the base of the control tower at the airport when he arrives. [REDACTED] stated she has seen EPSTEIN get off the plane with young girls. [REDACTED] recalled two specific times with the first being two girls who appeared to be eleven (11) to twelve (12) years old with white skin. [REDACTED] stated another time a girl looked to be sixteen (16) maybe seventeen (17) or eighteen (18) and appeared to be of mixed race. [REDACTED] stated the dates of these occurrences were between June/ July of 2018 through November of 2018. [REDACTED] stated she started working at STT in April of 2018 and was fully qualified after May so it was after that. She only worked on STT for about one (1) year.

SI [REDACTED] asked how far away was EPSTEIN from the control tower when they observed him. [REDACTED] stated maybe fifty (50) yards but they were using binoculars to look.

SI [REDACTED] asked if they get the flight plans? [REDACTED] stated that they typically get the out bound but not the inbound flight plans.

SI [REDACTED] asked what information is in the flight plans? [REDACTED] stated ATC information and route.

8. SIGNATURE (Name and Title) [REDACTED] Criminal Investigator	9. DATE 07/10/2019 6:42 PM EDT	12. DISTRIBUTION ☐ DISTRICT ☐ HEADQUARTERS ☐ OTHER
10. APPROVED (Name and Title) [REDACTED] Chief Inspector	11. DATE 07/11/2019 10:35 AM EDT	

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REPORT OF INVESTIGATION

Page 2 of 2

1. FID: 10127184
CASE: CC-1900-0613-7745-G

2. DATE OF REPORT: 07/10/2019

3. REPORTED
BY: [REDACTED]
AT: W00

4. SUBJECT NAME: EPSTEIN,JEFFREY EDWARD

5. MERGED FIDs:

SI [REDACTED] asked if it shows who is on the flight and where they are from? [REDACTED] stated no.

SI [REDACTED] asked if there was anyone else who would be willing to talk to him that worked with [REDACTED]. [REDACTED] stated there might be another person and that she would check and call SI [REDACTED] back.

SI [REDACTED] thanked [REDACTED] for her time and concluded the phone call.

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REPORT OF INVESTIGATION

Page 1 of 1

1. FID: 10127184 CASE: CC-1900-0613-7745-G	2. DATE OF REPORT: 06/13/2019	3. REPORTED BY: [REDACTED] AT: W00
4. SUBJECT NAME: EPSTEIN,JEFFREY EDWARD		
5. MERGED FIDs:		
6. TYPE OF REPORT: ☐ REPORT OF ELECTRONIC INTERCEPTION ☐ COLLATERAL LEAD ☐ WITNESS INTERVIEW ☐ ADMINISTRATIVE SUBPOENA ☐ CS REQUEST ☐ ARREST/CLOSE ☐ INTELLIGENCE UPDATE ☐ MEMORANDUM TO FILE ☐ DUE DILIGENCE ☒ OTHER: (APPROVAL FOR INVESTIGATION)		
7. HOURS WORKED:		

On June 30, 2008 Jeffrey Epstein (DOB: 01/20/1953) was convicted of F.S 796.03 in the state of Florida for procuring a person under the age of 18 for prostitution and sentenced to 13 months incarceration. As a result of this conviction EPSTEIN must register as a sex offender.

On March 15, 2019 EPSTEIN went to the US Virgin Island Department of Justice located on the island of St. Thomas and spoke in person to the Sex Offender Registry Coordinator. During this meeting EPSTEIN signed the Notification of Duty to Report travel.

On 3/19/2019 the USMS received notification from the US Virgin Islands Sex Offender Registry that EPSTEIN was traveling to France from 3/19/2019 through 03/29/2019 via his private jet (N212JE). No other countries are listed on the notification form. According to a public website that tracks flight activity EPSTEIN traveled on March 22, 2019 to Vienna, Austria and on March 27, 2019 to Monaco. These countries are not listed on the notification form.

Based on the above information, an MS04 investigation has been initiated to determine if EPSTEIN is in violation of 18 USC 2250 (b) regarding his failure to report international travel.

8. SIGNATURE (Name and Title) [REDACTED] Criminal Investigator	9. DATE 06/13/2019 2:01 PM EDT	12. DISTRIBUTION ☐ DISTRICT ☐ HEADQUARTERS ☐ OTHER _____
10. APPROVED (Name and Title) [REDACTED] Chief Inspector	11. DATE 06/13/2019 3:46 PM EDT	

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EFTA00040067

REPORT OF INVESTIGATION

Page 1 of 1

1. FID: 10127184 CASE: CC-1900-0613-7745-G	2. DATE OF REPORT: 08/05/2019	3. REPORTED BY: [REDACTED] AT: W00
4. SUBJECT NAME: EPSTEIN,JEFFREY EDWARD		
5. MERGED FIDs:		
6. TYPE OF REPORT: ☐ REPORT OF ELECTRONIC INTERCEPTION ☐ COLLATERAL LEAD ☐ WITNESS INTERVIEW ☐ ADMINISTRATIVE SUBPOENA ☐ CS REQUEST ☐ ARREST/CLOSE ☐ INTELLIGENCE UPDATE ☒ MEMORANDUM TO FILE (USM11 1353667) ☐ DUE DILIGENCE ☐ OTHER		
7. HOURS WORKED:		

On July 14, 2019 Senior Inspector (SI) [REDACTED] and [REDACTED] traveled to the US Virgin Islands (STT) to work on an operation involving International Megans Law (IML). While there SI [REDACTED] met with the AUSA's office to discuss this case.

- On July 17, 2019 SI [REDACTED] spoke with the AUSA [REDACTED] in regards to submitting an MLAT request to the countries of France, Monaco, Austria, and Morocco. AUSA [REDACTED] stated he would submit the requests.

- On or about July 19, 2019 SI [REDACTED] and [REDACTED] spoke with Customs and Border Protection (CBP) in regards to obtaining flight logs and records for EPSTEINs private plane. CBP stated these could be obtained through the pilots themselves or maybe the FAA.

- On July 22, 2019 SI [REDACTED] submitted a search warrant to AUSA [REDACTED] for EPSTEINs phone number that he listed he can be reached on during international travel. SI [REDACTED] is hoping to gain historical information that may provide insight to countries EPSTEIN visited while on international travel.

- On August 5, 2019 SI [REDACTED] received information from the FAA in regards to flight plan histories. This information reveals numerous more Countries of international travel by EPSTEINs jet. It will be investigated further.

The investigation continues..

8. SIGNATURE (Name and Title) [REDACTED] Criminal Investigator	9. DATE 08/05/2019 12:23 PM EDT	12. DISTRIBUTION ___DISTRICT ___HEADQUARTERS ___OTHER_____
10. APPROVED (Name and Title) [REDACTED] Chief Inspector	11. DATE 08/06/2019 1:21 PM EDT	

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08/27/2019 11:42 AM EDT

EFTA00040068

REPORT OF INVESTIGATION

Page 1 of 2

1. FID: 10127184 CASE: CC-1900-0613-7745-G	2. DATE OF REPORT: 06/24/2019	3. REPORTED BY [REDACTED] AT: W00
4. SUBJECT NAME: EPSTEIN,JEFFREY EDWARD		
5. MERGED FIDs:		
6. TYPE OF REPORT: ☐ REPORT OF ELECTRONIC INTERCEPTION ☐ COLLATERAL LEAD ☒ WITNESS INTERVIEW (USM11 1335209) ☐ ADMINISTRATIVE SUBPOENA ☐ CS REQUEST ☐ ARREST/CLOSE ☐ INTELLIGENCE UPDATE ☐ MEMORANDUM TO FILE ☐ DUE DILIGENCE ☐ OTHER		
7. HOURS WORKED:		

On June 24, 2019 at approximately 1100 hours Supervisory Inspector (SI) [REDACTED] and Senior Inspector (SI) [REDACTED] met with Investigative reporter [REDACTED] (Miami Herald) at the Moonlite Diner located in Hollywood, Florida.

During the interview SI [REDACTED] asked Ms. [REDACTED] if she knew of anyone who may have information in regards to EPSTEIN. Ms. [REDACTED] stated she has an informant who worked at the airport and the informant stated she has seen EPSTEIN walking with girls under the age of 18 within the last seven months. Her informant has witnessed the girls board a helicopter at his island (Little St. James) and fly to the airport to board EPSTEIN's airplane. SI [REDACTED] asked if the informant had any records of this. Ms. [REDACTED] stated the informant may have text messages that she sent to her friends upon witnessing the events. This informant now lives in [REDACTED], [REDACTED]. Ms. [REDACTED] gave her phone number to SI [REDACTED]

Ms. [REDACTED] stated she also knows a female who was employed for one week at EPSTEIN's residence before being released by him. This informant's boyfriend is still employed by EPSTEIN and Ms. [REDACTED] will reach out to see if he will speak with SI [REDACTED]

Ms. [REDACTED] also stated [REDACTED] is one of EPSTEIN's disgruntled attorneys who may have information, but requested SI [REDACTED] not contact him yet.

Ms. [REDACTED] stated [REDACTED] owned a modeling company and helped recruit girls for EPSTEIN.

Ms. [REDACTED] stated [REDACTED] was the Police Chief during the original EPSTEIN investigation and may be able to provide more insight concerning their investigation with EPSTEIN.

8. SIGNATURE (Name and Title) [REDACTED] Criminal Investigator	9. DATE 06/24/2019 1:05 PM EDT	12. DISTRIBUTION ___ DISTRICT ___ HEADQUARTERS ___ OTHER _____
10. APPROVED (Name and Title) [REDACTED] Chief Inspector	11. DATE 06/28/2019 11:15 AM EDT	

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08/27/2019 11:41 AM EDT

EFTA00040069

REPORT OF INVESTIGATION

Page 2 of 2

1. FID: 10127184
CASE: CC-1900-0613-7745-G

2. DATE OF REPORT: 06/24/2019

3. REPORTED
BY: [REDACTED]
AT: W00

4. SUBJECT NAME: EPSTEIN,JEFFREY EDWARD

5. MERGED FIDs:

The interview concluded at approximately noon and SI [REDACTED] told Ms [REDACTED] he would be in touch.

Case continues...

REPORT OF INVESTIGATION

Page 1 of 1

1. FID: 10127184 CASE: CC-1900-0108-2923-G	2. DATE OF REPORT: 01/08/2019	3. REPORTED BY [REDACTED] AT: W00
4. SUBJECT NAME: EPSTEIN,JEFFREY EDWARD		
5. MERGED FIDs:		
6. TYPE OF REPORT: ☐ REPORT OF ELECTRONIC INTERCEPTION ☐ COLLATERAL LEAD ☐ WITNESS INTERVIEW ☐ ADMINISTRATIVE SUBPOENA ☐ CS REQUEST ☐ ARREST/CLOSE ☐ INTELLIGENCE UPDATE ☐ MEMORANDUM TO FILE ☐ DUE DILIGENCE ☒ OTHER: (APPROVAL FOR INVESTIGATION)		
7. HOURS WORKED:		

Jeffrey EPSTEIN was referred to the USMS IML Unit by the US Attorney's Office for the Southern District of New York as a convicted Sex Offender from the state of Florida who travels frequently Internationally and may have not reported all his International travel as required by International Megan's Law.

EPSTEIN was convicted in 2008 in the state of Florida of procuring a person under the age of 18 for prostitution, sentenced to 13 months incarceration and is required for life as a sex offender in the state of Florida.

EPSTEIN is currently registered as a sex offender in the US Virgin Islands as his primary address and he has secondary addresses in Florida, NY, New Mexico, and Paris France. In NY state, EPSTEIN is classified as a Level 3 sex offender (highest-risk) with a lifetime registrant requirement.

Investigation reveals EPSTEIN travels Internationally quite frequently using private planes and may have failed to report all his International travel. Based upon this information, a MS04 investigation has been initiated to determine if EPSTEIN is in Violation of Title 18 Section 2250(b) regarding his failure to report International travel.

End of Report

8. SIGNATURE (Name and Title) [REDACTED] Senior Inspector	9. DATE 01/08/2019 10:56 AM EST	12. DISTRIBUTION __DISTRICT __HEADQUARTERS __OTHER_____
10. APPROVED (Name and Title) [REDACTED] Chief Inspector	11. DATE 01/08/2019 3:51 PM EST	

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08/27/2019 11:41 AM EDT

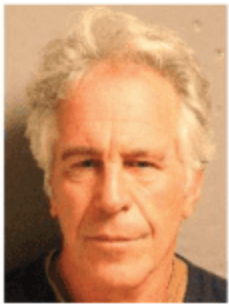
EFTA00040071

United States Marshals Service - LIMITED OFFICIAL USE
USM-129 Individual Custody/Detention Report



Name: EPSTEIN,JEFFREY EDWARD USMS Number: 76318-054 FID: 10127184

I. IDENTIFICATION DATA

USMS NUMBER: 76318-054		NAME: EPSTEIN,JEFFREY EDWARD		
ADDRESS: 9 EAST 71ST NEW YORK, NY 10021		PHONE: [REDACTED]		
DOB: 01/20/1953	AGE: 66	POB: BROOKLYN, NY		
SEX: M	RACE: W	HAIR: BRO	EYE: BLU	HEIGHT: 6'00" WEIGHT: 185
SSN: [REDACTED]	FBI NBR/UCN: 787075K6		ALIEN NBR:	
OTHER NUMBER	OTHER NUMBER TYPE	ISSUE DATE	EXP DATE	REMARK
[REDACTED]	Passport Number			
	Passport Number			US PASSPORT
	Originating Police or Identification Number			NY SID #
	Originating Police or Identification Number			
Passport Number	03/08/2019	03/07/2029	US PASSPORT #	
** SPECIAL CAUTIONS AND MEDICAL		REMARKS	SEPARATEE	
Mental Concerns		Suicidal Tendencies		
TB CLEARANCE STATUS		ASSESSMENT DATE	EXPIRED	
NOT CLEARED				
DNA TEST DATE	TAKEN?	DEPUTY	REMARKS/KIT #	
N/A	No	N/A	FBI ARREST	
DETAINER DATE	L/R	ACTIVE?	AGENCY	REMARK
//****		N		
PRISONER ALIAS		ALIAS REMARK		
EPSTEIN,JEFFREY E				

II. CUSTODY INFORMATION

Custody 1	CUSTODY START DATE: 07/08/2019	END DATE: 08/10/2019
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United States Marshals Service - LIMITED OFFICIAL USE
USM-129 Individual Custody/Detention Report



Name: EPSTEIN,JEFFREY EDWARD USMS Number: 76318-054 FID: 10127184

CUSTODY STATUS	OFFICE	START DATE:	END DATE	REMARK
WT-CASE-RESOLVE	054	07/08/2019	08/10/2019	
RL-SUICIDE	054	08/10/2019	08/10/2019	

COURT CASE 1	DISTRICT OFFICE	JUDGE	US ATTORNEY	DEFENSE ATTORNEY
19-CR-00490	NY/S 500 PEARL ST. (MANHATTAN)			

Arrests	ARREST DATE	ARRESTING AGENCY	ARREST LOCATION	WARRANT NUMBER
	07/08/2019	FEDERAL BUREAU OF INVESTIGATION		

Offenses	CODE	OFFENSE	REMARK	DISPOSITION
	3699	Sex Offense	18 USC 371 SEX TRAFFICKING CONSPIRACY	Other

COURT CASE STATUS	START DATE	END DATE	REMARK
ARREST	07/08/2019	07/08/2019	
WT-TRIAL	07/08/2019	08/10/2019	
CASE-RESOLVED	08/10/2019	08/10/2019	

INST	INSTITUTION NAME	ADMIT	RELEASE	BOARDED	ACTION OR DISPOSITION
NYM	MCC New York	07/08/2019	08/10/2019	33	
TOTAL DAYS BOARDED					33 (0 BND, 0 MED)

III. MEDICAL CONDITION/TREATMENT HISTORY

DATE SERVICE PROVIDED	VENDOR	SERVICE PROVIDED
//****		

United States Marshals Service - LIMITED OFFICIAL USE
USM-312 Personal History of Defendant

Name: EPSTEIN,JEFFREY EDWARD USMS Number: 76318-054

I. IDENTIFICATION DATA

USMS NUMBER: 76318-054		NAME: EPSTEIN,JEFFREY EDWARD			
ADDRESS: 9 EAST 71ST NEW YORK, NY 10021		PHONE: [REDACTED]			
DOB: 01/20/1953	AGE: 66	POB: BROOKLYN, NY			
SEX: M	RACE: W	HAIR: BRO	EYE: BLU	HEIGHT: 6'00"	WEIGHT: 185

SSN: [REDACTED]	FBI NBR/UCN: 787075K6	ALIEN NBR:
OTHER NUMBER: [REDACTED]	OTHER NUMBER TYPE: Originating Police or Identification Number Passport Number Passport Number Passport Number Originating Police or Identification Number	

** SPECIAL CAUTIONS AND MEDICAL	REMARKS	SEPARATEE
Mental Concerns	Suicidal Tendencies	

DNA TEST DATE	TAKEN?	DEPUTY	REMARKS/KIT #
N/A	No	N/A	FBI ARREST

DETAINER DATE	ACTIVE?	AGENCY	REMARK
//****	N		

PRISONER ALIAS	ALIAS REMARK
EPSTEIN,JEFFREY E	

II. ASSOCIATE DATA (b) (6), (b) (7)(C)

ASSOCIATE	TYPE	DOB	AGE	ADDRESS	REMARK
[REDACTED]	BR	**/**/****			

Limited Official Use



Name: EPSTEIN,JEFFREY EDWARD		USMS Number: 76318-054	
EMPLOYMENT START	EMPLOYMENT END	DETAILS	
//****	**/**/****	Occupation: BANKER Address:	Employer: Contact:
//****	**/**/****	Occupation: SOUTHERN TRUST COMPANY Address:	Employer: Contact:
//****	**/**/****	Occupation: SELF EMPLOYED Address:	Employer: Contact:

III. MISCELLANEOUS INFORMATION

LICENSE PLATE	STATE	TYPE	EXP YEAR

LICENSE NO.	STATE	EXP YEAR
	VI	2024

CTR: 1	CUSTODY START DATE: 07/08/2019	END DATE: 08/10/2019
PROPERTY MAILINGS		
NO PROPERTY RECEIVED		

IV. OFFENSE INFORMATION

CTR	COURT CASE NO.	CUST DATE	ARREST AGY	STATUS	ARREST DATE
1A	19-CR-00490	07/08/2019	FEDERAL BUREAU OF INVESTIGATION	Case is resolved	07/08/2019

OFFENSE	REMARK
3699 - Sex Offense	18 USC 371 SEX TRAFFICKING CONSPIRACY

Limited Official Use

The New York Times

Jeffrey Epstein Dead in Suicide at Manhattan Jail, Officials Say

Mr. Epstein, the financier indicted on sex trafficking charges, was not under suicide watch at the time of his death.



By William K. Rashbaum, Benjamin Weiser and Michael Gold

Aug. 10, 2019

Jeffrey Epstein, the financier who was long dogged by accusations of sexual abuse of girls and who was able to cultivate a stream of high-profile friends despite his lurid lifestyle, killed himself in his Manhattan jail cell, officials said on Saturday.

Mr. Epstein hanged himself, the officials said. He was found at roughly 6:30 a.m. Saturday at the Metropolitan Correctional Center in Manhattan and was taken to a hospital, where he was pronounced dead, the federal Bureau of Prisons said in a statement.

Last month, a week after being denied bail on federal sex trafficking charges, Mr. Epstein was found unconscious in his cell at the jail with marks on his neck. Prison officials had been investigating that incident as a possible suicide attempt.

Mr. Epstein had been on suicide watch after he was found injured on July 23 and received a daily psychiatric evaluation, according to a person familiar with his detention. He was removed from suicide watch on July 29 and returned to the special housing unit, a segregated area of the prison with extra security, this person said.

The authorities did not immediately explain why he was taken off suicide watch. The F.B.I. said it was investigating, and Attorney General William P. Barr said in a statement that a special inquiry would be opened into what had happened.

“I was appalled to learn that Jeffrey Epstein was found dead early this morning from an apparent suicide while in federal custody,” Mr. Barr said. “Mr. Epstein’s death raises serious questions that must be answered. In addition to the FBI’s investigation, I have consulted with the Inspector General who is opening an investigation into the circumstances of Mr. Epstein’s death.”

Manhattan federal prosecutors last month charged Mr. Epstein, 66, with sex trafficking of girls as young as 14. The indictment renewed attention toward how Mr. Epstein — who had opulent homes, a private jet and access to elite circles — had escaped severe punishment in an earlier investigation into his abuse of girls more than a decade ago in Florida.

He had avoided federal criminal charges in 2008 after prosecutors brokered a widely criticized deal that allowed him to plead guilty to state charges of solicitation of prostitution from a minor and serve 13 months in jail. Even while in custody, Mr. Epstein was allowed to leave the jail for 12 hours a day, six days a week, to work at his office in Florida.

The new federal indictment also focused scrutiny on an array of luminaries in government, politics, business, academia, science and fashion with whom Mr. Epstein had associated over the years, including Donald J. Trump, Bill Clinton, Prince Andrew of Britain and the retail billionaire Leslie H. Wexner.

Mr. Epstein's defense team — the lawyers Reid Weingarten, Marty Weinberg and Michael Miller — declined to comment on his cause of death. "We are enormously sorry to learn of today's news. No one should die in jail," they said in a statement.

Mr. Epstein's death brought an abrupt end to a prosecution that his accusers had hoped would finally shed light on how he had been allowed to commit what they said was a string of depraved crimes for so many years — and what role his wealth, privilege and connections played.

██████████, who said she had been raped by Mr. Epstein after being recruited into his circle outside her Manhattan high school in 2001, said she was angry that he would not have to face his accusers in court.

"We have to live with the scars of his actions for the rest of our lives, while he will never face the consequences of the crimes he committed — the pain and trauma he caused so many people," Ms. ██████████ said. She said she hoped investigators would pursue charges against people who had aided and protected Mr. Epstein.

A cache of previously sealed legal documents, released on Friday by a federal appeals court, provided new, disturbing details about what was going on inside Mr. Epstein's homes and how his associates recruited young women and girls, including from a Florida high school.

The documents — among the most expansive sets of materials publicly disclosed in the 13 years since Mr. Epstein was first charged with sex crimes — include depositions, police incident reports, photographs, receipts, flight logs and even a memoir written by ██████████, who said she was a sex trafficking victim of Mr. Epstein and his acquaintances.

Mr. Epstein was arrested on July 6 at Teterboro Airport in New Jersey after his private plane landed on a flight from Paris. Federal prosecutors charged him with sex trafficking and sex trafficking conspiracy.

Prosecutors said in their indictment that he and his employees had engaged in a scheme to bring girls as young as 14 to both his Upper East Side mansion and his palatial waterfront home in Palm Beach, Fla., between 2002 and 2005.

He pleaded not guilty to the charges. If convicted, he would have faced up to 45 years in prison.

Mr. Epstein had initially sought home detention at his Upper East Side mansion while he awaited trial. His lawyers had proposed allowing Mr. Epstein to post a substantial bond and stay in his luxurious seven-story townhouse, watched by 24-hour security guards, at his expense.

But a federal judge denied the request, concluding that Mr. Epstein was a flight risk, citing his “vast wealth,” which prosecutors have placed at more than \$500 million.



Mr. Epstein hanged himself and his body was found at roughly 6:30 Saturday morning at the Metropolitan Correctional Center, officials said. Yana Paskova for The New York Times

Mr. Epstein, a former money manager with Wall Street experience, depicted himself as a wealthy financier with stellar investment savvy. In addition to his homes in Florida and New York, he also owned a private island in the United States Virgin Islands, a massive ranch in New Mexico and a residence in Paris. He had numerous high-end vehicles and access to private planes and helicopters.

Mr. Epstein's younger brother, Mark, was his "only living immediate family member," according to a memo filed in federal court last month by Mr. Epstein's lawyers. The memo described the pair as close.

Even after he served time in a Florida jail a decade ago and became a registered sex offender, Mr. Epstein successfully maintained a reputation as a billionaire investor, philanthropist and sophist.

Still, in the time since Mr. Epstein's arrest last month, evidence has suggested that the former money manager's business acumen was more myth than fact. His client list was not as extensive as believed, and the services he offered were less remarkable than once portrayed.

Earlier this week, perhaps Mr. Epstein's most notable client, Mr. Wexner, the executive behind Victoria's Secret and Bath & Body Works, accused Mr. Epstein of misappropriating "vast sums of money" from him and his family.

Mr. Epstein's recent arrest prompted renewed scrutiny of his longstanding connections to prominent executives on Wall Street, in the corporate world and even in the scientific community.

Some Wall Street titans found themselves forced to answer questions as to why they had continued to socialize or do business with Mr. Epstein after his 2008 conviction. They included the private equity billionaire Leon Black, the longtime banking executive Jes Staley and the hedge fund manager [REDACTED].

The executives all said they had no idea he had engaged in sex trafficking, and had sought to minimize their contacts with Mr. Epstein in recent years.

Also drawing attention were a number of big universities — including Harvard University and the Massachusetts Institute of Technology — that had accepted large contributions from foundations established by Mr. Epstein even after his 2008 conviction, which had required him to register as a sex offender.

The contributions to the universities and to scientists at those schools were part of a campaign by Mr. Epstein to polish his image and get himself back into the good graces of the academic and corporate elite, The Times found.

But even as Mr. Epstein was trying to rebrand himself, he continued to peddle in ideas that should have given some reason to pause.

A number of scientists said he had showed an interest in biogenetic engineering and had discussed a plan to seed the human race with his DNA by having young women impregnated at his Zorro Ranch in New Mexico. There is no indication that Mr. Epstein ever took steps toward carrying out those plans, but some in the scientific world continued to meet with him and take his money.

Much of the wealth Mr. Epstein did amass can be attributed to his work for one man: Mr. Wexner, the billionaire real estate magnate, whose L Brands company developed iconic brands like Victoria's Secret and The Limited.

Mr. Wexner, 81, was Mr. Epstein's biggest client. In 1991, Mr. Wexner gave Mr. Epstein vast and unfettered authority to manage his personal fortune for roughly 16 years. Managing Mr. Wexner's fortune enabled Mr. Epstein to become hugely wealthy himself and gave him the Wall Street bona fides he needed to seek business from other corporate executives.

Along the way, Mr. Epstein would acquire a mansion on Manhattan's Upper East Side that had once belonged to Mr. Wexner. He would also obtain a Boeing 727 jet from Mr. Wexner's company. The money he made working for Mr. Wexner enabled Mr. Epstein to buy his own island in the United States Virgin Islands — where he relocated much of his financial advisory business in 1999.

Mr. Wexner has said he had severed all ties to Mr. Epstein in late 2007. Just this week, he said in a letter to his charitable foundation that he had learned in 2007 that Mr. Epstein had misappropriated vast sums from him.

But Mr. Wexner apparently never notified authorities of the suspected misappropriation — even though Mr. Epstein at the time was being investigated in Florida for engaging in sex with underage girls.

Mr. Wexner has said he was horrified to learn of the new charges against his longtime financial adviser. But the real estate magnate has not fully explained why he gave Mr. Epstein such wide-ranging discretion to manage his financial affairs.

Katie Benner, Emily Steel and Matthew Goldstein contributed reporting.

Related**Opinion | The Editorial Board****Jeffrey Epstein Is Dead. His Victims Still Deserve Justice.** July 8, 2019**'Massage' Was Code for 'Sex': New Epstein Abuse Revelations** Aug. 9, 2019

William K. Rashbaum is a senior writer on the Metro desk, where he covers political and municipal corruption, courts, terrorism and broader law enforcement topics. He was a part of the team awarded the 2009 Pulitzer Prize for breaking news. @WRashbaum • Facebook

Benjamin Weiser is a reporter covering the Manhattan federal courts. He has long covered criminal justice, both as a beat and investigative reporter. Before joining The Times in 1997, he worked at The Washington Post. @BenWeiserNYT

A version of this article appears in print on Aug. 11, 2019 of the New York edition with the headline: EPSTEIN IS FOUND DEAD IN HIS CELL IN NEW YORK JAIL

[READ 990 COMMENTS](#)

[REDACTED]
[REDACTED] called 11/2/21
@ 1835

[REDACTED] wants to clarify (2) statements
from our conversation earlier today over
Webex w/ [REDACTED]

(1) The last time he recalled using
drugs was @ 32 YO (not 25 YO)
eat mushrooms @ a Bachelor Party

(2) [REDACTED] is a regular cigarette smoker
and has not documented that by
telling his Doctors or Health insurance,

Materials Provided for Review:

Documents/Audio/Video:

1. Epstein Plea documents (SDNY_GM_00078754-00078773)
2. PBPD reports 2005-2006 (SDNY_GM_00101088-00101174)
3. [REDACTED] Day Planner (Native)
4. [REDACTED] Diary Scrapbook (Native)
5. [REDACTED] diary excerpts (AFARMER00010471-10477)
6. Pleading excerpt re George Rush interview of JE (SDNY_GM_00131943)
7. Affidavit of George Rush (4.6.10) (SDNY_GM_00555837)
8. Supp Affidavit of George Rush (4.30.10) (SDNY_GM_00555849)
9. Affidavit of Michael Fisten (4.26.10) (SDNY_GM00133755)
10. JE Comprehensive report (12.6.18) (SDNY_GM_00171822)
11. Property Details report – NYC (SDNY_GM_00172151)
12. Property Details report – Florida (SDNY_GM_00172183)
13. Psych evaluation notes (SDNY_GM_00367309)
14. JE report card 1966 (SDNY_GM_00469627)
15. Photo – JE & [REDACTED] 2002 (SDNY_GM_00491334)
16. Email between [REDACTED] & JE (5.5.10) (SDNY_GM_00717520)
17. Email between [REDACTED] & JE (5.5.10) (SDNY_GM_02014856)
18. List of “Thoughts” from JE to Graydon (SDNY_GM_02735352)
19. Typed note from JE to Graydon re [REDACTED] (SDNY_GM_02735353)
20. Email (9.12.02) (SDNY_GM_02736614)
21. Trilateral Commission member 2003 (SDNY_GM_00080493)
22. Summons and Complaint (CMA v. JE/SK 2.25.08)
23. First Amended Complaint (CMA v. JE/SK 29.09)
24. Affidavit of Dr. Hall 8.18.09 (SDNY_GM_01986418)
25. GX-106
26. GX-107
27. GX-108
28. Government ltr re disclosure of Expert Lisa Rocchio (4.23.21)
29. Government ltr re disclosure of 3502 materials (4.23.21)
30. SDNY_GM_00789445
31. SDNY_GM_00970541
32. SDNY_GM_01005056
33. SDNY_GM_01674683
34. SDNY_GM_01674923
35. SDNY_GM_01906777-780
36. SDNY_GM_01915472
37. SDNY_GM_01937083

38. SDNY_GM_00467727
39. SDNY_GM_00469609
40. SDNY_GM_00471694
41. SDNY_GM_00491238
42. SDNY_GM_00491263
43. SDNY_GM_00491290
44. SDNY_GM_00491303
45. SDNY_GM_00491927
46. SDNY_GM_00502151
47. SDNY_GM_00502694
48. SDNY_GM_00505588
49. SDNY_GM_00506534
50. SDNY_GM_SUPP_00016748
51. Epstein Indictment (7.2.19)
52. Maxwell Superseding Indictment (7.20.20)
53. Maxwell Second Superseding Indictment (3.29.21)
54. JE and the Myth of the Underage Woman_The Atlantic (8.15.19)
55. Inside Woody Allen's Close Friendship w/ JE_Daily Beast (3.14.21)
56. Bill Gates Hoped Epstein Would Help him win a Nobel_NYPost (5.18.21)
57. Jeffrey had a Way of Making these People Materialize_VanityFair (10.01.19)
58. We Found JE's other little Black Book_Insider (7.6.21)
59. A story of power_podcast on Epstein_The Guardian (7.11.21)
60. De Georgiou article_Night & Day (7.25.04)
61. De Georgiou article_Tatler (8.28.19)
62. [REDACTED] depo, Vol. I (11.10.09)
63. [REDACTED] depo, Vol. II (11.10.09)
64. Epstein SORA Hearing (1.18.11)
65. Det. [REDACTED] & [REDACTED] transcript (10.11.05) (SDNY_GM_00119201)
66. Det. [REDACTED] depo ([REDACTED] v. Maxwell) (6.21.16) (SDNY_GM_00145214)
67. (SDNY_GM_SUPP_00219000-219005; 00122767)
68. (SDNY_GM_SUPP_00201375-201380)
69. (SDNY_GM_SUPP_00086948)
70. (SDNY_GM_SUPP_00086961)
71. (SDNY_GM_SUPP_00108247-108254)
72. DOC000000028277
73. DOC000000028230
74. Defiance Podcast – Epstein's Mentor – Episode 62 (10.12.20)
75. [REDACTED] – Chasing Ghislaine - Episode 5 (7.15.21)
76. [REDACTED] – Chasing Ghislaine - Episode 6 (7.15.21)
77. [REDACTED] – Chasing Ghislaine - Episode 7 (7.15.21)

3500 Materials:

3501-008-001
3501-019-001
3501-021-003
3501-022-001
3501-028-001
3501-053-006
3501-054-002
3501-102-001
3501-137-001
3501-142-004
3501-144-032
3501-104-001

3502-001 thru 3502-025

3505-001
3505-026
3505-100
3505-027
3505-030
3505-031
3505-034
3505-036
3505-035
3505-043
3505-044
3505-058
3505-028
3505-076
3505-079
3505-081
3505-059
3505-068
3505-074
3505-005
3505-090
3505-091
3505-088
3505-089
3505-092
3505-097

3509-003
3509-005
3509-008
3509-020
3509-001
3509-023
3509-028
3509-011

3513-009
3513-031
3513-002
3513-037
3513-005
3513-041
3513-045
3513-059

3514-001
3514-019
3514-023
3514-026
3514-006
3514-012

Exhibit A



MATTER ID# 448193

National Court Order Compliance

11760 US HIGHWAY 1, SUITE 600
NORTH PALM BEACH, FL 33408-
3029

[Redacted] (Fax)

VERIFICATION OF AUTHENTICITY OF AT&T RECORDS

STATE OF FLORIDA
COUNTY OF PALM BEACH

BEFORE ME, the undersigned authority, personally appeared [Redacted], who being duly sworn, deposes and says:

My name is [Redacted]. I am over the age of 18 and qualified to make this affidavit. I am employed by AT&T as a Legal Compliance Analyst and serve as the Custodian of Records for AT&T. I have been employed by AT&T since 06/23/2006. Attached to this Affidavit are copies of AT&T subscriber and call detail records for:

Number(s): [Redacted]

The attached copies of billing records were originally provided without certification by an analyst at the AT&T GLDC. The records have been purged and are unable to be created in the same format as originally provided. Christian R. Everdell mailed them to the National Compliance Center on 10/14/2021. The attached copies of usage records appear to be in the same format as records that were maintained and produced by AT&T. These documents are in the same format and contain call data consistent with AT&T records and do not appear to have been modified or altered in any way. I routinely rely on these types of documents in the course of my duties as Custodian of Records and Legal Compliance Analyst for AT&T.

Based on the regular practices of AT&T in 2008, the records were:

- Made at or near the time of each act, event, condition, opinion, or diagnosis set forth in the records.
- Made by or from information transmitted by AT&T systems.
- Would have been kept in the course of regularly conducted business activity.

It was the regular practice of the business activity to make these records.

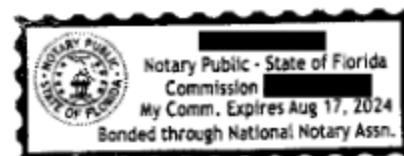
[Redacted]
10/20/2021

The foregoing affidavit was sworn to and subscribed before me by [Redacted] who is personally known to me.

[Redacted]
Notary Public, State of Florida

Printed Name

Serial Number (if any)



National Court Order Compliance

EFTA00040088

Exhibit F

COMPOSITE EXHIBIT A
NON-PROSECUTION AGREEMENT AND
ADDENDUM

IN RE:
INVESTIGATION OF
JEFFREY EPSTEIN

NON-PROSECUTION AGREEMENT

IT APPEARING that the City of Palm Beach Police Department and the State Attorney's Office for the 15th Judicial Circuit in and for Palm Beach County (hereinafter, the "State Attorney's Office") have conducted an investigation into the conduct of Jeffrey Epstein (hereinafter "Epstein");

IT APPEARING that the State Attorney's Office has charged Epstein by indictment with solicitation of prostitution, in violation of Florida Statutes Section 796.07;

IT APPEARING that the United States Attorney's Office and the Federal Bureau of Investigation have conducted their own investigation into Epstein's background and any offenses that may have been committed by Epstein against the United States from in or around 2001 through in or around September 2007, including:

- (1) knowingly and willfully conspiring with others known and unknown to commit an offense against the United States, that is, to use a facility or means of interstate or foreign commerce to knowingly persuade, induce, or entice minor females to engage in prostitution, in violation of Title 18, United States Code, Section 2422(b); all in violation of Title 18, United States Code, Section 371;
- (2) knowingly and willfully conspiring with others known and unknown to travel in interstate commerce for the purpose of engaging in illicit sexual conduct, as defined in 18 U.S.C. § 2423(f), with minor females, in violation of Title 18, United States Code, Section 2423(b); all in violation of Title 18, United States Code, Section 2423(e);
- (3) using a facility or means of interstate or foreign commerce to knowingly persuade, induce, or entice minor females to engage in prostitution; in violation of Title 18, United States Code, Sections 2422(b) and 2;
- (4) traveling in interstate commerce for the purpose of engaging in illicit sexual conduct, as defined in 18 U.S.C. § 2423(f), with minor females; in violation

of Title 18, United States Code, Section 2423(b); and

- (5) knowingly, in and affecting interstate and foreign commerce, recruiting, enticing, and obtaining by any means a person, knowing that the person had not attained the age of 18 years and would be caused to engage in a commercial sex act as defined in 18 U.S.C. § 1591(c)(1); in violation of Title 18, United States Code, Sections 1591(a)(1) and 2; and

IT APPEARING that Epstein seeks to resolve globally his state and federal criminal liability and Epstein understands and acknowledges that, in exchange for the benefits provided by this agreement, he agrees to comply with its terms, including undertaking certain actions with the State Attorney's Office;

IT APPEARING, after an investigation of the offenses and Epstein's background by both State and Federal law enforcement agencies, and after due consultation with the State Attorney's Office, that the interests of the United States, the State of Florida, and the Defendant will be served by the following procedure;

THEREFORE, on the authority of R. Alexander Acosta, United States Attorney for the Southern District of Florida, prosecution in this District for these offenses shall be deferred in favor of prosecution by the State of Florida, provided that Epstein abides by the following conditions and the requirements of this Agreement set forth below.

If the United States Attorney should determine, based on reliable evidence, that, during the period of the Agreement, Epstein willfully violated any of the conditions of this Agreement, then the United States Attorney may, within ninety (90) days following the expiration of the term of home confinement discussed below, provide Epstein with timely notice specifying the condition(s) of the Agreement that he has violated, and shall initiate its prosecution on any offense within sixty (60) days' of giving notice of the violation. Any notice provided to Epstein pursuant to this paragraph shall be provided within 60 days of the United States learning of facts which may provide a basis for a determination of a breach of the Agreement.

After timely fulfilling all the terms and conditions of the Agreement, no prosecution for the offenses set out on pages 1 and 2 of this Agreement, nor any other offenses that have been the subject of the joint investigation by the Federal Bureau of Investigation and the United States Attorney's Office, nor any offenses that arose from the Federal Grand Jury investigation will be instituted in this District, and the charges against Epstein if any, will be dismissed.

Terms of the Agreement:

1. Epstein shall plead guilty (not nolo contendere) to the Indictment as currently pending against him in the 15th Judicial Circuit in and for Palm Beach County (Case No. 2006-cf-009495AXXXMB) charging one (1) count of solicitation of prostitution, in violation of FL Stat. § 796.07. In addition, Epstein shall plead guilty to an Information filed by the State Attorney's Office charging Epstein with an offense that requires him to register as a sex offender, that is, the solicitation of minors to engage in prostitution, in violation of Florida Statutes Section 796.03;
2. Epstein shall make a binding recommendation that the Court impose a thirty (30) month sentence to be divided as follows:
 - (a) Epstein shall be sentenced to consecutive terms of twelve (12) months and six (6) months in county jail for all charges, without any opportunity for withholding adjudication or sentencing, and without probation or community control in lieu of imprisonment; and
 - (b) Epstein shall be sentenced to a term of twelve (12) months of community control consecutive to his two terms in county jail as described in Term 2(a), *supra*.
3. This agreement is contingent upon a Judge of the 15th Judicial Circuit accepting and executing the sentence agreed upon between the State Attorney's Office and Epstein, the details of which are set forth in this agreement.
4. The terms contained in paragraphs 1 and 2, *supra*, do not foreclose Epstein and the State Attorney's Office from agreeing to recommend any additional charge(s) or any additional term(s) of probation and/or incarceration.
5. Epstein shall waive all challenges to the Information filed by the State Attorney's Office and shall waive the right to appeal his conviction and sentence, except a sentence that exceeds what is set forth in paragraph (2), *supra*.
6. Epstein shall provide to the U.S. Attorney's Office copies of all

proposed agreements with the State Attorney's Office prior to entering into those agreements.

7. The United States shall provide Epstein's attorneys with a list of individuals whom it has identified as victims, as defined in 18 U.S.C. § 2255, after Epstein has signed this agreement and been sentenced. Upon the execution of this agreement, the United States, in consultation with and subject to the good faith approval of Epstein's counsel, shall select an attorney representative for these persons, who shall be paid for by Epstein. Epstein's counsel may contact the identified individuals through that representative.
8. If any of the individuals referred to in paragraph (7), *supra*, elects to file suit pursuant to 18 U.S.C. § 2255, Epstein will not contest the jurisdiction of the United States District Court for the Southern District of Florida over his person and/or the subject matter, and Epstein waives his right to contest liability and also waives his right to contest damages up to an amount as agreed to between the identified individual and Epstein, so long as the identified individual elects to proceed exclusively under 18 U.S.C. § 2255, and agrees to waive any other claim for damages, whether pursuant to state, federal, or common law. Notwithstanding this waiver, as to those individuals whose names appear on the list provided by the United States, Epstein's signature on this agreement, his waivers and failures to contest liability and such damages in any suit are not to be construed as an admission of any criminal or civil liability.
9. Epstein's signature on this agreement also is not to be construed as an admission of civil or criminal liability or a waiver of any jurisdictional or other defense as to any person whose name does not appear on the list provided by the United States.
10. Except as to those individuals who elect to proceed exclusively under 18 U.S.C. § 2255, as set forth in paragraph (8), *supra*, neither Epstein's signature on this agreement, nor its terms, nor any resulting waivers or settlements by Epstein are to be construed as admissions or evidence of civil or criminal liability or a waiver of any jurisdictional or other defense as to any person, whether or not her name appears on the list provided by the United States.
11. Epstein shall use his best efforts to enter his guilty plea and be

sentenced not later than October 26, 2007. The United States has no objection to Epstein self-reporting to begin serving his sentence not later than January 4, 2008.

12. Epstein agrees that he will not be afforded any benefits with respect to gain time, other than the rights, opportunities, and benefits as any other inmate, including but not limited to, eligibility for gain time credit based on standard rules and regulations that apply in the State of Florida. At the United States' request, Epstein agrees to provide an accounting of the gain time he earned during his period of incarceration.
13. The parties anticipate that this agreement will not be made part of any public record. If the United States receives a Freedom of Information Act request or any compulsory process commanding the disclosure of the agreement, it will provide notice to Epstein before making that disclosure.

Epstein understands that the United States Attorney has no authority to require the State Attorney's Office to abide by any terms of this agreement. Epstein understands that it is his obligation to undertake discussions with the State Attorney's Office and to use his best efforts to ensure compliance with these procedures, which compliance will be necessary to satisfy the United States' interest. Epstein also understands that it is his obligation to use his best efforts to convince the Judge of the 15th Judicial Circuit to accept Epstein's binding recommendation regarding the sentence to be imposed, and understands that the failure to do so will be a breach of the agreement.

In consideration of Epstein's agreement to plead guilty and to provide compensation in the manner described above, if Epstein successfully fulfills all of the terms and conditions of this agreement, the United States also agrees that it will not institute any criminal charges against any potential co-conspirators of Epstein, including but not limited to Sarah Kellen, Adriana Ross, Lesley Groff, or Nadia Marcinkova. Further, upon execution of this agreement and a plea agreement with the State Attorney's Office, the federal Grand Jury investigation will be suspended, and all pending federal Grand Jury subpoenas will be held in abeyance unless and until the defendant violates any term of this agreement. The defendant likewise agrees to withdraw his pending motion to intervene and to quash certain grand jury subpoenas. Both parties agree to maintain their evidence, specifically evidence requested by or directly related to the grand jury subpoenas that have been issued, and including certain computer equipment, inviolate until all of the terms of this agreement have been satisfied. Upon the successful completion of the terms of this agreement, all outstanding grand jury subpoenas shall be deemed withdrawn.

By signing this agreement, Epstein asserts and certifies that each of these terms is material to this agreement and is supported by independent consideration and that a breach of any one of these conditions allows the United States to elect to terminate the agreement and to investigate and prosecute Epstein and any other individual or entity for any and all federal offenses.

By signing this agreement, Epstein asserts and certifies that he is aware of the fact that the Sixth Amendment to the Constitution of the United States provides that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial. Epstein further is aware that Rule 48(b) of the Federal Rules of Criminal Procedure provides that the Court may dismiss an indictment, information, or complaint for unnecessary delay in presenting a charge to the Grand Jury, filing an information, or in bringing a defendant to trial. Epstein hereby requests that the United States Attorney for the Southern District of Florida defer such prosecution. Epstein agrees and consents that any delay from the date of this Agreement to the date of initiation of prosecution, as provided for in the terms expressed herein, shall be deemed to be a necessary delay at his own request, and he hereby waives any defense to such prosecution on the ground that such delay operated to deny him rights under Rule 48(b) of the Federal Rules of Criminal Procedure and the Sixth Amendment to the Constitution of the United States to a speedy trial or to bar the prosecution by reason of the running of the statute of limitations for a period of months equal to the period between the signing of this agreement and the breach of this agreement as to those offenses that were the subject of the grand jury's investigation. Epstein further asserts and certifies that he understands that the Fifth Amendment and Rule 7(a) of the Federal Rules of Criminal Procedure provide that all felonies must be charged in an indictment presented to a grand jury. Epstein hereby agrees and consents that, if a prosecution against him is instituted for any offense that was the subject of the grand jury's investigation, it may be by way of an Information signed and filed by the United States Attorney, and hereby waives his right to be indicted by a grand jury as to any such offense.

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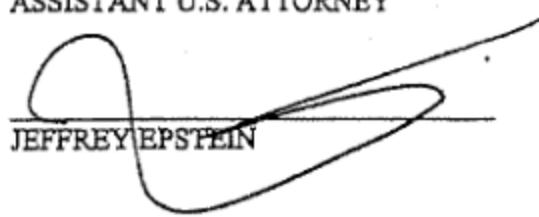
By signing this agreement, Epstein asserts and certifies that the above has been read and explained to him. Epstein hereby states that he understands the conditions of this Non-Prosecution Agreement and agrees to comply with them.

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

Dated: _____

By: _____
ASSISTANT U.S. ATTORNEY

Dated: 9/24/07


JEFFREY EPSTEIN

Dated: _____

GERALD LEFCOURT, ESQ.
COUNSEL TO JEFFREY EPSTEIN

Dated: _____

LILLY ANN SANCHEZ, ESQ.
ATTORNEY FOR JEFFREY EPSTEIN

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R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

Dated: _____

By: _____
A. MARIE VILLAFANA
ASSISTANT U.S. ATTORNEY

Dated: _____

JEFFREY EPSTEIN

Dated: 9/24/07


GERALD LEFCOURT, ESQ.
COUNSEL TO JEFFREY EPSTEIN

Dated: _____

LILLY ANN SANCHEZ, ESQ.
ATTORNEY FOR JEFFREY EPSTEIN

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R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

Dated: _____

By: _____
A. MARIE VILLAFANA
ASSISTANT U.S. ATTORNEY

Dated: _____

JEFFREY EPSTEIN

Dated: _____

GERALD LEFCOURT, ESQ.
COUNSEL TO JEFFREY EPSTEIN

Dated: 9-24-07

LILLY ANN SANCHEZ, ESQ.
ATTORNEY FOR JEFFREY EPSTEIN

IN RE:

INVESTIGATION OF

JEFFREY EPSTEIN

ADDENDUM TO THE NON-PROSECUTION AGREEMENT

IT APPEARING that the parties seek to clarify certain provisions of page 4, paragraph 7 of the Non-Prosecution Agreement (hereinafter "paragraph 7"), that agreement is modified as follows:

- 7A. The United States has the right to assign to an independent third-party the responsibility for consulting with and, subject to the good faith approval of Epstein's counsel, selecting the attorney representative for the individuals identified under the Agreement. If the United States elects to assign this responsibility to an independent third-party, both the United States and Epstein retain the right to make good faith objections to the attorney representative suggested by the independent third-party prior to the final designation of the attorney representative.
- 7B. The parties will jointly prepare a short written submission to the independent third-party regarding the role of the attorney representative and regarding Epstein's Agreement to pay such attorney representative his or her regular customary hourly rate for representing such victims subject to the provisions of paragraph C, *infra*.
- 7C. Pursuant to additional paragraph 7A, Epstein has agreed to pay the fees of the attorney representative selected by the independent third party. This provision, however, shall not obligate Epstein to pay the fees and costs of contested litigation filed against him. Thus, if after consideration of potential settlements, an attorney representative elects to file a contested lawsuit pursuant to 18 U.S.C. s 2255 or elects to pursue any other contested remedy, the paragraph 7 obligation of the Agreement to pay the costs of the attorney representative, as opposed to any statutory or other obligations to pay reasonable attorneys fees and costs such as those contained in s 2255 to bear the costs of the attorney representative, shall cease.

By signing this Addendum, Epstein asserts and certifies that the above has been read and explained to him. Epstein hereby states that he understands the clarifications to the Non-Prosecution Agreement and agrees to comply with them.

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

Dated: 10/30/07

By:


A. MARIE VILLAFANA
ASSISTANT U.S. ATTORNEY

Dated: 10/29/07


JEFFREY EPSTEIN

Dated: _____

GERALD LEFCOURT, ESQ.
COUNSEL TO JEFFREY EPSTEIN

Dated: _____

LILLY ANN SANCHEZ, ESQ.
ATTORNEY FOR JEFFREY EPSTEIN

By signing this Addendum, Epstein asserts and certifies that the above has been read and explained to him. Epstein hereby states that he understands the clarifications to the Non-Prosecution Agreement and agrees to comply with them.

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

Dated: 10/30/07

By:


A. MARIE VILLAFANA
ASSISTANT U.S. ATTORNEY

Dated: _____

JEFFREY EPSTEIN

Dated: 10/29/07


GERALD LEFCOURT, ESQ.
COUNSEL TO JEFFREY EPSTEIN

Dated: _____

LILLY ANN SANCHEZ, ESQ.
ATTORNEY FOR JEFFREY EPSTEIN

By signing this Addendum, Epstein asserts and certifies that the above has been read and explained to him. Epstein hereby states that he understands the clarifications to the Non-Prosecution Agreement and agrees to comply with them.

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

Dated: 10/30/07

By


A. MARIE VILLAFANA
ASSISTANT U.S. ATTORNEY

Dated: _____

JEFFREY EPSTEIN

Dated: _____

GERALD LEFCOURT, ESQ.

Dated: 10-29-07


LILLY ANN SANCHEZ, ESQ.
ATTORNEY FOR JEFFREY EPSTEIN

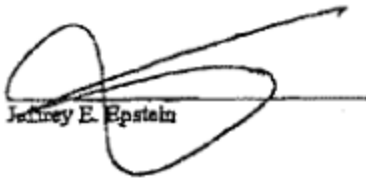
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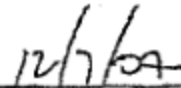
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T-866 P.003/004 F-276

Affirmation

I, Jeffrey E. Epstein do hereby re-affirm the Non-Prosecution Agreement and Addendum to same dated October 30, 2007,


Jeffrey E. Epstein


Date

From: "[REDACTED]" <[REDACTED]>

To: "[REDACTED] [Contractor]" <[REDACTED]>, [REDACTED]
(USANYS) [Contractor]" <[REDACTED]>, "[REDACTED]"
<[REDACTED]>, "[REDACTED] (USANYS)" <[REDACTED]>,
"[REDACTED]" <[REDACTED]>

Subject: FW: US v Maxwell, 20-cr-330 (AJN), public portion of transcript attached

Date: Thu, 11 Nov 2021 02:56:58 +0000

Attachments: LBAAMAXH.pdf

From: Paula Speer <pspeer@sdreporters.com>

Sent: Wednesday, November 10, 2021 6:21 PM

To: [REDACTED] <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>;
[REDACTED] <[REDACTED]>

Subject: [EXTERNAL] US v Maxwell, 20-cr-330 (AJN), public portion of transcript attached

Good evening.

The public portion of the transcript of today's hearing in US v Maxwell, 20-cr-330 (AJ), is attached.

The judge has granted permission for us to handle the sealed portion by email, and it will be sent separately, later this evening.

Regards,

Paula Speer
SD Reporters

From: Nathan NYSD Chambers <[REDACTED]>

To: Jeff Pagliuca <[REDACTED]>, Laura Menninger <[REDACTED]>.

[illegible]

Subject: 20cr330, US v. Maxwell

Date: Thu, 11 Nov 2021 22:10:19 +0000

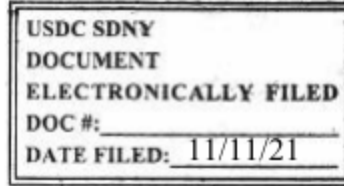
Attachments: 20cr330_Daubert_Opinion_11.11.21_ts.pdf

Counsel:

Attached please find an opinion and order issued by Judge Nathan. It will be docketed tomorrow morning after today's holiday.

Sincerely,
Chambers of the Hon. Alison J. Nathan

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



United States of America,

—v—

Ghislaine Maxwell,

Defendant.

20-CR-330 (AJN)

OPINION & ORDER

ALISON J. NATHAN, District Judge:

Before the Court is the Defense's motion to exclude the Government's expert witness, Dr. Lisa Rocchio, pursuant to Federal Rule of Evidence 702 and the standard in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). Dkt. No. 386. The Government filed a response brief, Dkt. No. 397, and Defendant filed a reply, Dkt. No. 398. The Court conducted a *Daubert* hearing on November 10, 2021, at which both parties examined Dr. Rocchio. Dkt. No. 431. The Court stated its oral opinion at that hearing that it would deny and grant in part Defendant's motion, to be followed by this opinion.

I. Legal standard

Federal Rule of Evidence 702 governs the admissibility of expert testimony. That rule states:

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles and methods to the facts of the case.

The Court exercises a “gatekeeper function” in assessing the admissibility of expert testimony. *Restivo v. Hessemann*, 846 F.3d 547, 575 (2d Cir. 2017). To determine whether an expert’s method is reliable, the Court considers the non-exhaustive list provided by the Supreme Court in *Daubert*, including whether the expert’s method has been tested, whether it has been subjected to peer review, the rate of error, standards controlling the method’s operation, and whether the method is accepted by the expert community. *United States v. Kidd*, 385 F. Supp. 3d 259, 263 (S.D.N.Y. 2019) (citing *Daubert*, 509 U.S. at 593–94).

But Rule 702 ultimately sets a “liberal” and “permissive” standard of admissibility. *Nimely v. City of New York*, 414 F.3d 381, 395–96 (2d Cir. 2005). In particular, not every expert admissible under *Daubert* need rely on a method that conforms with “the exactness of hard science methodologies.” *E.E.O.C. v. Bloomberg L.P.*, No. 07-CV-8383 (LAP), 2010 WL 3466370, at *13–14 (S.D.N.Y. Aug. 31, 2010) (quoting *United States v. Simmons*, 470 F.3d 1115, 1123 (5th Cir. 2006)).

II. Discussion

As a preliminary matter, the Defense argues that the additional materials filed by the Government in support of Dr. Rocchio’s expertise should be excluded as failing to comply with the Court’s order that the Government make all expert witness disclosures by April 23, 2021. Dkt. No. 250. But that Order, made pursuant to Federal Rule of Criminal Procedure 16(a)(1)(G), required only that the Government provide an adequate summary of the intended topics and opinions of Dr. Rocchio’s testimony, which the Government did here in a timely manner. *See*

Kidd, 385 F. Supp. 3d at 262. The Defense cites only one case, *United States v. Lewis*, which involved the distinct situation where a district court excluded expert testimony because the notice itself was untimely. 818 F. App'x 74, 79 (2d Cir. 2020). The Court concludes that the Government's supplemental materials in further response to the Defense's motion are timely and may be considered in resolving the *Daubert* motion.

Turning to the proffered expert opinions, as articulated in the Government's disclosure and at the *Daubert* hearing, Dr. Rocchio would offer five expert opinions. First, that perpetrators of sexual abuse of minors frequently use manipulation or coercion short of physical force as part of a strategic pattern, often referred to as grooming, to make the minor vulnerable to abuse. Second, that manipulation and grooming can prevent the minor from understanding their experience as abuse and so prevent disclosure. Third, that abuse can cause long-term traumatic and psychological consequences. Fourth, that the presence of another individual can facilitate sexual abuse of minors. And fifth, that nondisclosure, incremental disclosure, and secrecy are common among victims of sexual abuse and that memory can be affected by a variety of factors, including the effects of trauma.

The Defense does not contest that Dr. Rocchio has the qualifications to express opinions on these subjects. Dr. Rocchio has a PhD in clinical psychology and is a clinical instructor at the Alpert Medical School of Brown University. She has more than two decades of experience treating hundreds of victims of trauma, many of which were minor victims of sexual abuse. She has published peer-reviewed articles on trauma and sexual abuse and has given numerous talks in addition to her teaching. Given these papers, and her credible and extensive hearing testimony, the Court therefore finds Dr. Rocchio qualified as an expert.

The Defense instead argues that Dr. Rocchio's method is unreliable, that it is not relevant to the jury's determination, and that its prejudicial effect would substantially outweigh its probative value. These arguments rely heavily on a district court opinion from outside this circuit, *United States v. Raymond*, 700 F. Supp. 2d 142 (D. Me. 2010). After careful consideration of the Defense's arguments and the thorough reasoning in *Raymond*, the Court concludes that Dr. Rocchio's anticipated testimony is admissible with one exception. The Court will address first why Dr. Rocchio's testimony is admissible and then address the one opinion that it will exclude.

First, Dr. Rocchio's method is reliable and well-accepted in her profession. It is for this reason that several courts in this circuit have admitted the testimony of similar experts, such as testimony on so-called trauma bonding to explain why prostitutes may not flee from their pimps even when not physically restrained. In *United States v. Kidd*, the court admitted the testimony, finding it to be "quite common[]" and accepted in the academic literature. 385 F. Supp. 3d at 263. Identical testimony was admitted by Judge Furman in *United States v. Dupigny*, No. 18-Cr.-528 (JMF) (S.D.N.Y. 2019), Dkt. No. 198 at 27, by Judge Engelmayer in *United States v. Randall*, 19 Cr. 131 (PAE) (S.D.N.Y. 2020), Dkt. No. 335 at 24–30, and by Judge Cote in *United States v. Torres*, No. 20-CR-608 (DLC), 2021 WL 1947503, at *7 (S.D.N.Y. May 13, 2021).

Their decisions are consistent with the vast majority of courts to consider the admission of such experts. A number of courts have admitted experts on the particular topic of grooming at issue here, a sample of which include the Seventh Circuit in *United States v. Romero*, 189 F.3d 576, 585 (7th Cir. 1999), the Fifth Circuit in *United States v. Hitt*, 473 F.3d 146, 158 (5th Cir. 2006), the Ninth Circuit in *United States v. Halamek*, 5 F.4th 1081, 1087–89 (9th Cir. 2021), the Tenth Circuit in *United States v. Batton*, 602 F.3d 1191, 1201–02 (10th Cir. 2010), the Eighth

Circuit in *United States v. Johnson*, 860 F.3d 1133, 1141 (8th Cir. 2017), and the District of Massachusetts in *Doe ex rel. Pike v. Pike*, 405 F. Supp. 3d 243, 249 (D. Mass. 2019).

Here, Dr. Rocchio has extensive experience treating minors who have been sexually abused, and those decades of relevant experience, combined with her formal training, are an adequate basis for her to testify on methods that perpetrators of sexual abuse often use to build trust with their victims, whether that be grooming or other forms of manipulation and coercion. The Government has also provided several articles on the subject of grooming that convince the Court that it is a well-accepted theory in Dr. Rocchio's field. Though the Second Circuit has not ruled on the admissibility of a grooming expert, it has previously recognized the academic literature on grooming to facilitate sexual abuse of minors. See *United States v. Brand*, 467 F.3d 179, 203 (2d Cir. 2006). The Defense cites to several contrary articles that suggest experts disagree on the kinds of behaviors that define grooming. But if experts disagree on the proper interpretation of evidence, "it is not the Court's role to resolve the dispute through exclusion of one of the expert's opinions." *In re Digital Music Antitrust Litig.*, 321 F.R.D. 64, 80 (S.D.N.Y. 2017).

Moreover, Dr. Rocchio addressed these contrary articles during the *Daubert* hearing, identifying points of agreement and disagreement. Based on her testimony, the parties' submission and accompanying exhibits, the Court concludes that the core concept of grooming is well-accepted in the relevant literature, even if experts continue to debate the details.

The Defense's primary argument is that Dr. Rocchio's method is unreliable because it is based on her personal experience with the clients she has treated, that Dr. Rocchio did not verify whether those clients were truthful, and that Dr. Rocchio has not and cannot identify an error rate. The Court finds that these objections are misplaced in the field of clinical psychology,

particularly when studying the causes and effects of sexual abuse of minors. The Court agrees with Judge Engelmayer's response to this argument:

The absence of large quantity statistical studies is explained by a practical reason that should be obvious to all. Studying the circumstances and psychological drivers of trafficked women is not like studying diseases or potential cures in laboratory animals. In those studies, laboratory conditions literally can be achieved. . . .

That strictly quantitative mode of inquiry is not realistic or even ethical in the context of studying sex trafficking. The causes and contributors to sex trafficking by their nature must be studied retrospectively. They cannot ethically be studied otherwise. Subjects cannot be tested to see under what circumstances they would and would not, on a going forward basis, fall prey to the predations of sex traffickers. Given the necessarily retrospective nature of such a study, given the small size of the populations under review, and given the inherently individualized circumstances presented by different perpetrators, victims, and contexts in this tumultuous and emotionally fraught area of criminal conduct, the vocabulary of error rates and statistical significance is an unusually poor fit.

Tr. at 29–30, *United States v. Randall*, 19-Cr.-131 (PAE) (S.D.N.Y. 2020), Dkt. No. 335.

For the reasons Judge Engelmayer gave—which Dr. Rocchio echoed in her testimony—the Court finds that the error-rate factor listed by *Daubert* is not determinative as to the reliability of Dr. Rocchio's method.

For similar reasons, the Court rejects the Defense's argument that Dr. Rocchio's method is unreliable because she relied on the reports of her clients. Given the realities of studying sensitive criminal acts like sexual abuse, a researcher can only rarely verify reports with absolute certainty. Yet that does not mean a clinical or forensic psychologist accepts all statements at face value. Rather, as the Government notes, part of Dr. Rocchio's profession is to examine and diagnose her patients consistent with her significant training and specialized knowledge. Further, on the forensic side of her practice, Dr. Rocchio regularly investigates and verifies sexual abuse. She reports "remarkable consistency" between the reports of her clinical patients

and her forensic findings. Nov. 10 Tr. at 40. That said, the Defense is of course free to cross-examine Dr. Rocchio about how she evaluates her patients.

The Defense also suggests that Dr. Rocchio's experience is based on an unrepresentative sample of alleged victims because her patients self-selected seeking treatment with her. Yet the Defense does not explain why Dr. Rocchio's experience with a large number of patients would not be applicable to the alleged victims in this case. To the extent the Defense wishes to argue that Dr. Rocchio's experience is under-representative, that is a topic for cross-examination.

Further, the Defense argues that Dr. Rocchio's experience treating victims of sexual abuse does not make her an expert on grooming, which would require experience with perpetrators themselves. This argument overlooks the fact that, as she testified, Dr. Rocchio also relied on literature that includes studies of sexual abusers' reported behaviors. But more importantly, the Court concludes, as other courts like the Ninth Circuit have, that extensive experience with victims can be used to study perpetrators' process of victimization. *See Halamek*, 5 F.4th at 1088. That is especially so here where the crux of Dr. Rocchio's expected testimony is the effect that grooming behaviors have on the minor, not the perpetrator's mental state when performing the behaviors.

Second, the Court finds that Dr. Rocchio's opinions are relevant to the Government's case against Ms. Maxwell. Two points of law bear mention here. For one, as the Second Circuit has explained, expert testimony cannot "constitute evaluations of witness credibility"—that is, expert testimony is inadmissible if it "comment[s] directly, under the guise of expert opinion, on the credibility of trial testimony from" specific fact witnesses. *Nimely*, 414 F.3d at 398. Additionally, if the expert's "opinion is one that the jury could reach with their own 'common knowledge and common sense,' no expert testimony is warranted." *Edmondson v. RCI Hosp.*

Holdings, Inc., No. 16-CV-2242 (VEC), 2020 WL 1503452, at *6 (S.D.N.Y. Mar. 30, 2020) (quoting 4 Weinstein’s Federal Evidence § 702.03 (2019)); *see also United States v. Mulder*, 273 F.3d 91, 101 (2d Cir. 2001) (explaining that “the district court should not admit testimony that is ‘directed solely to lay matters which a jury is capable of understanding and deciding without the expert’s help’” (quoting *United States v. Castillo*, 924 F.2d 1227, 1232 (2d Cir. 1991))). Dr. Rocchio’s first and second opinions may assist the jury in understanding how a minor may be enticed, induced, or coerced into illegal sexual activity without physical force. These opinions may also assist a jury in assessing evidence that some alleged victims repeatedly interacted with Jeffrey Epstein, seemingly voluntarily, even after they suffered abuse. Dr. Rocchio’s fourth opinion is similarly relevant to the charges that require proving intentional enticement or inducement.

Dr. Rocchio’s third and fifth opinions pertain to issues that will arise in the case based on anticipated cross-examination by the Defense. Specifically, the third opinion becomes relevant if the Defense impeaches an alleged victim based on their substance abuse. And the fifth opinion may become relevant if the Defense impeaches an alleged victim based on an ostensible delay in fully disclosing sexual abuse. At the *Daubert* hearing, the Defense stated that they intended to pursue both lines of impeachment at trial. Nov. 10 Tr. at 156–57. The Court therefore finds these elements of Dr. Rocchio’s testimony relevant to matters the Defense intends to put in issue during anticipated cross-examination. The Court also concludes that these opinions satisfy the other relevant *Daubert* requirements. Namely, they would assist the jury in understanding concepts that require expert knowledge without directing the jury to reach any conclusion as to a witness’s credibility. Additionally, both Dr. Rocchio’s opinion about sexual abuse’s connection to substance abuse and her opinion about delayed disclosure are “are outside the ken of the

average person,” and so appropriate for expert testimony. *United States v. Felder*, 993 F.3d 57, 72 (2d Cir. 2021). Nor would admission of these opinions cause unfair Rule 403 prejudice since they are relevant rebuttal to impeachment points that the Defense will put in issue.

The Defense argues that Dr. Rocchio’s testimony is not relevant because the Government represents that she will testify only to general principles and not offer “testimony regarding any specific victim.” Dkt. No. 386 at 3. The Defense has the law backwards on this point. As explained above regarding the Second Circuit’s *Nimely* decision, an expert may not testify as to a specific witness’s credibility. 414 F.3d at 398. And as other courts have explained in admitting similar testimony, Dr. Rocchio’s testimony is appropriate because she does *not* testify as to any specific witness’s credibility. *See, e.g., Torres*, No. 20-CR-608 (DLC), 2021 WL 1947503, at *7; *Johnson*, 860 F.3d at 1140 (8th Cir. 2017) (explaining that an expert may testify “regarding the general characteristics that sexually abused children exhibit” but may not usurp the jury’s role of assessing the credibility of any specific victim); *United States v. Telles*, 6 F.4th 1086, 1097–98 (9th Cir. 2021) (same).

This analysis is referred to in the case relied upon by the Defense, *United States v. Raymond*, and in portions of the Defense’s briefing, as a question of “fit.” 700 F. Supp. 2d at 149. But *Daubert*’s “fit” requirement is really just a specialized relevance inquiry that asks “whether expert testimony proffered in the case is sufficiently tied to the facts of the case that it will aid the jury in resolving a factual dispute.” *Alto v. Sun Pharm. Indus., Inc.*, No. 1:19-CV-09758 (GHW), 2021 WL 4803582, at *3 (S.D.N.Y. Oct. 13, 2021) (quoting *Daubert*, 509 U.S. at 591). Fit is satisfied if the expert’s opinion would assist the jury’s decision on a relevant question of fact without “usurp[ing] either the role of the trial judge in instructing the jury as to the applicable law or the role of the jury in applying that law to the facts before it.” *Id.* (quoting

United States v. Duncan, 42 F.3d 97, 101 (2d Cir. 1994)). For the reasons already provided, the Court finds that fit is satisfied here.

Third, the probative value of Dr. Rocchio's testimony is not substantially outweighed by 403 prejudice to Ms. Maxwell. The Court finds that Dr. Rocchio's testimony would not unduly "'simplify' an otherwise complex case" or mislead jurors by a supposedly infallible expert. Dkt. No. 386 at 11. Dr. Rocchio's opinions speak only to concepts and will not (and indeed may not) suggest that the jury find any alleged victim witness to be credible or to find Ms. Maxwell guilty. The more general nature of Dr. Rocchio's opinions, which the Court heard in detail at the *Daubert* hearing, therefore mitigates its prejudicial effect. *Telles*, 6 F.4th at 1097. It is the jury's role to determine whether and how Dr. Rocchio's opinions apply to the facts of this case and the credibility of the witnesses.

Last, as previously mentioned, the Court will grant in part the Defense's *Daubert* motion. The Defense argues that Dr. Rocchio's opinion that grooming can be done to facilitate sexual abuse by a third party or that the presence of a third party can otherwise facilitate grooming is unreliable. The Defense calls this "grooming-by-proxy." *E.g.*, Dkt. No. 386 at 9. Terminology aside, the Court agrees with this narrower objection to Dr. Rocchio's testimony. As discussed at the hearing, this phenomenon is not identified in the relevant literature regarding child sexual abuse and has not been subjected to peer review. Instead, the Court understands this opinion to be an extrapolation of the broader principle of how grooming functions through the development of trust. That extrapolation may be logical and follow common sense, but it is for the jury to make on the facts of this case. The Court therefore excludes Dr. Rocchio's opinion that the presence of a third party can facilitate grooming. Dr. Rocchio's core opinions about grooming, however, remain admissible under the Rule 702 and *Daubert* standard and remain relevant

pursuant to Rule 401 and not unduly prejudicial. As discussed, the jury may extrapolate from the opinions that the presence of a third party creates the atmosphere of trust that can facilitate grooming. Moreover, as the Government explains, Dr. Rocchio's testimony is still relevant because the Government alleges both that Ms. Maxwell "in fact participated in sexual abuse of minors" and that she "conspired with a predator who groomed and sexually abused minors." Dkt. No. 397 at 27.

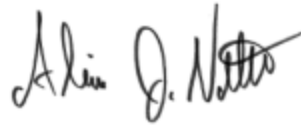
The Court therefore denies the Defense's motion to exclude Dr. Rocchio's testimony except as to the opinion that the presence of a third party can facilitate grooming.

This resolves docket number 386.

SO ORDERED.

Dated: November 11, 2021

New York, New York

A handwritten signature in black ink, appearing to read "Alison J. Nathan", is written above a horizontal line.

ALISON J. NATHAN
United States District Judge

From: Christian Everdell <[REDACTED]>
To: Nathan NYSD Chambers <[REDACTED]>
Cc: "[REDACTED]", "[REDACTED]
[REDACTED], [REDACTED] (USANYS)"
<[REDACTED]>, [REDACTED]"
<[REDACTED]>, Jeff Pagliuca <[REDACTED]>, "Laura
Menninger" <[REDACTED]>, BOBBI C STERNHEIM
<[REDACTED]>

Subject: [EXTERNAL] U.S. v. Ghislaine Maxwell, S2 20 Cr. 330 (AJN) -- Response to
Government's Letters re: Accuser-3's Evidence

Date: Fri, 12 Nov 2021 04:57:30 +0000

Attachments: 2021.11.11_Letter_to_Judge_Nathan_re_Response_to_Government_Letters_re_Accuser-
3_Evidence.PDF

Inline-Images: image001.gif; image002.gif

Dear Chambers –

Attached please find Ms. Maxwell's response to the government's letters, dated November 5, 2021 and November 7, 2021, regarding Accuser-3's evidence. Pursuant to our established protocol, we are submitting the letter to the Court under temporary seal to allow the government to propose any redactions it deems necessary.

Respectfully submitted,

Christian R Everdell

COHEN & GRESSER LLP

800 Third Avenue
New York, NY 10022

[REDACTED] | [view bio](#)
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Haddon, Morgan and Foreman, P.C.
Jeffrey S. Pagliuca

150 East 10th Avenue
Denver, Colorado 80203
PH [REDACTED]
FX [REDACTED]
www.hmflaw.com
[REDACTED]

November 8, 2021

VIA EMAIL



United States Attorney's Office
Southern District of New York
1 St. Andrew's Plaza
New York, NY 10007

Re: *United States v. Ghislaine Maxwell*, 20 Cr. 330 (AJN)
Defendant's Good Faith, Non-Frivolous Objections to Proffered Co-Conspirator
Hearsay Statements

Dear Counsel,

Pursuant to the Court's November 1, 2021 Order we write to note our good faith objections to certain categories of alleged co-conspirator hearsay statements, and representative examples:

Regarding the first, third, and fourth¹ designated categories, there are two issues for conferral. First, we assume that these proffered statements are limited to those individuals specifically identified by the government as "minor victims" in the indictment or correspondence to defense counsel dated October 11, 2021. There were many alleged minor victims in the Southern Florida state and federal investigations. To the extent that the government intends to include statements made to other alleged "minor victims" not specifically identified, Ms.

¹ "Statements made by Epstein to friends and Family of Minor Victims," "Statements made by CC-2 to friends and Family of Minor Victims," and "Statements made by Jeffrey Epstein to the Minor Victims or in their presence."

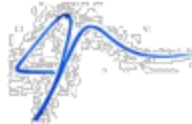
November 8, 2021

Page 2

Maxwell objects. In addition, these categories do not contain any temporal limitations and we object to any statements allegedly made outside the dates of the alleged conspiracy.

Category 2, “Statements made by Jeffrey Epstein to his employees” appears to, primarily, relate to statements that post-date any alleged conspiracy. The first exemplar is a statement allegedly from Epstein to CC-1 claiming that Ms. Maxwell “used to find girls for him.” This statement, or statements like it, cannot have been made either in the course of or in furtherance of any conspiracy at issue here and are no more than “idle chatter.” *United States v. Lieberman*, 637 F.2d 95, 102 (2d Cir.1980) (challenged testimony “smack[ed] of nothing more than casual conversation about past events. It is difficult to envision how it would have furthered the conspiracy”). Similarly, the second example concerns direction from Epstein and CC-2 to CC-1 to “help someone who was coming to take the computers....” Again, this statement does not appear to be during or in furtherance of any conspiracy alleged in the indictment. *See Lutwak v. United States*, 344 U.S. 604 (1953); *Krulewitch v. United States*, 336 U.S. 440 (1949). We assume the third example relates to the time period alleged in the indictment. To the extent it does not we object.

Best Regards,

A handwritten signature in blue ink, appearing to read 'Jeffrey S. Pagliuca', with a stylized flourish at the end.

Jeffrey S. Pagliuca

From: [REDACTED]

To: [REDACTED]

Cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Subject: RE: AT&T FILE # 227815.001 - Affidavit for purged records

Date: Wed, 17 Nov 2021 20:24:07 +0000

Attachments: 2021.11.17_Court_Subpoena_-_AT&T.pdf

Hello,

Subpoena attached.

Thanks,
[REDACTED]

From: testimony <[REDACTED]>

Sent: Wednesday, November 17, 2021 12:49 PM

To: [REDACTED]

Cc: [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] <[REDACTED]>

Subject: [EXTERNAL] RE: AT&T FILE # 227815.001 - Affidavit for purged records

Good afternoon,

Please send us a subpoena to appear as soon as possible. We will then begin to locate a witness so that they can see the records and travel arrangements can be made.

Thank you,

[AT&T Court Appearance Team, BF](#)
Finance – Global Legal Demand Center
[REDACTED]

North Palm Beach, FL. 33408
[REDACTED]

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From: [REDACTED]

Sent: Wednesday, November 17, 2021 10:25 AM

To: testimony <[REDACTED]>

Cc: [REDACTED]
[REDACTED]
[REDACTED]

Subject: RE: AT&T FILE # 227815.001 - Affidavit for purged records

Good morning,

We need a records custodian to testify at this trial, which starts on November 29. Would you please identify someone and let us know?

You should already have a trial subpoena from us, but if not and you need one, please let us know.

Thanks,

[REDACTED]

[REDACTED]
Assistant United States Attorney
Southern District of New York
1 Saint Andrews Plaza
New York, New York 10007
[REDACTED]
[REDACTED]

From: testimony <[REDACTED]>

Sent: Tuesday, October 12, 2021 1:05 PM

To: [REDACTED]

Subject: [EXTERNAL] AT&T FILE # 227815.001 - Affidavit for purged records

Importance: High

AT&T FILE # 227815.001

Affidavit for purged records

AT&T Court Appearance Team
Finance – Global Legal Demand Center

AT&T

[REDACTED]
[REDACTED]
[REDACTED]

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From: "[REDACTED]" <[REDACTED]>
To: Jeff Pagliuca <[REDACTED]>, Brian Burns <[REDACTED]>
Cc: "ceverdell [REDACTED]>, Patrick Smith
<[REDACTED]>, Laura Menninger <[REDACTED]>
"[REDACTED]" <[REDACTED]>
<[REDACTED]>, "[REDACTED]" <[REDACTED]>, "[REDACTED]"
<[REDACTED]> (USANYS)" <[REDACTED]>
Subject: RE: Subpoena for [REDACTED]
Date: Thu, 18 Nov 2021 02:27:03 +0000
Attachments: 2021.11.14 Mtn for_Order_Auth_a_Sub_Pursnt_to_F.R.Crim.P_17(c)
(3)_re_[REDACTED].pdf; 2021.11.14_Ex._1.pdf
Inline-Images: image001.gif; image002.jpg

Thanks, Jeff.

Brian, in light of Jeff's email, attached is the unredacted defense motion.

Thanks,
[REDACTED]

From: Jeff Pagliuca <[REDACTED]>
Sent: Wednesday, November 17, 2021 9:07 PM
To: Brian Burns <[REDACTED]>
Cc: ceverdell [REDACTED]; Patrick Smith <[REDACTED]>; Laura Menninger
[REDACTED] bcsternheim [REDACTED] <[REDACTED]>; [REDACTED]
[REDACTED] <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>; [REDACTED]
<[REDACTED]>
Subject: [EXTERNAL] Re: Subpoena for [REDACTED]

Brian, I believe that we were waiting for any proposed redactions from the government. We have no problem with the government sending you a copy of the motion. If the government does not object, we will send it. However, the government has designated every production confidential, subject to its protective order, and the motion contains information designated as confidential. Accordingly, we will defer to it as to what you should receive.

Best Regards,

Jeffrey S. Pagliuca.

On Nov 17, 2021, at 7:58 PM, Brian Burns <[REDACTED]> wrote:

Defense counsel – Would you please provide us a copy of your motion seeking the issuance of this subpoena? We haven't seen a copy. Thank you.

Brian T. Burns
Smith Villazor LLP
250 West 55th Street, 30th Floor
New York, New York 10019
Office [REDACTED] **Direct** [REDACTED] | **Mobile** [REDACTED]

From: Christian Everdell [REDACTED]
Sent: Tuesday, November 16, 2021 8:48 PM
To: Patrick Smith [REDACTED] Brian Burns [REDACTED]
Cc: Jeff Pagliuca [REDACTED] Laura Menninger [REDACTED] BOBBI C STERNHEIM [REDACTED]
[REDACTED] > [REDACTED] < [REDACTED] > [REDACTED] < [REDACTED] > [REDACTED] < [REDACTED] > [REDACTED] (USANYS) < [REDACTED] > [REDACTED] < [REDACTED] >
Subject: [EXTERNAL EMAIL] Subpoena for [REDACTED]

Counsel –

Attached please find the signed subpoena for [REDACTED] Please acknowledge receipt.

Regards,

Christian R Everdell

COHEN & GRESSER LLP

800 Third Avenue
New York, NY 10022

[REDACTED] | [view bio](#)
www.cohengresser.com

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EFTA00040125

-----X	
UNITED STATES OF AMERICA	:
	:
v.	:
	:
GHISLAINE MAXWELL,	:
	:
Defendant.	:
	:
	:
-----X	

S2 20 Cr. 330 (AJN)

Jeffrey S. Pagliuca
Laura A. Menninger
HADDON, MORGAN & FOREMAN P.C.

[REDACTED]

113

EFTA00040126

Defendant Ghislaine Maxwell requests that the Court enter an Order authorizing her counsel to issue a subpoena under Federal Rule of Criminal Procedure 17(c) to [REDACTED] Administrator, Epstein Victim's Compensation Program, for certain items identified in Attachment A to the proposed Subpoena, together attached as Exhibit 1 to this Motion, for the following reasons:

I. Background

On October 11, 2021, the government began producing 3500 material to the defense. These rolling productions confirmed that the four Accusers referenced in the indictment applied for and received millions of dollars from the Epstein Victim Compensation Fund. Ms. Maxwell requests the Court's assistance in subpoenaing documents submitted by the Accusers and the witnesses for use at trial. The documents should be returned to this Court for an *in camera* review and, subject to the Court's review, disclosed to the defense to be used for impeachment of the witnesses at trial.

II. Legal Standard

Rule 17(c) permits subpoenas compelling the production of "books, papers, documents, data, or other objects" prior to trial. Fed. R. Crim. P. 17(c)(1). Most district courts in the Second Circuit, including this Court, apply the analysis set forth in *United States v. Nixon*, 418 U.S. 683, 699-700 (1974). *See United States v. Pena*, No. 15-CR-551 (AJN), 2016 WL 8735699, at *1 –2 (S.D.N.Y. Feb. 12, 2016). The party requesting the information "must make a preponderance showing that the materials requested are relevant, specifically identified, admissible, and not otherwise procurable by the exercise of due diligence." *Id.* (quotations and citations omitted).

III. Factual and Procedural History

A. The Allegations in the Superseding Indictment

Counts One and Three of the S2 Indictment allege that Ms. Maxwell conspired to violate two separate provisions of the Mann Act, 18 U.S.C. §§ 2422, 2423(a). Count One alleges that Ms. Maxwell conspired to entice "one and more individuals" to travel in interstate and foreign commerce to engage in "sexual activity for which a person can be charged with a criminal offense" in violation of 18 U.S.C. § 2422. (S2 Indictment ¶¶11-13). Count Three alleges that Ms. Maxwell conspired to transport "an individual" in interstate and foreign commerce to engage in "sexual activity for which a person can be charged with a criminal offense" in violation of 18 U.S.C. § 2423(a). (*Id.* ¶¶ 16-19). Counts One and Three allege overt acts purportedly involving Accusers 1, 2, and 4 and Witness-3.¹

Count Two of the S2 Indictment alleges enticement to engage in illegal sex acts in violation of the Mann Act, 18 U.S.C. § 2422. Count Four alleges transportation of a minor to engage in illegal sexual activity in violation of 18 U.S.C. § 2423. Counts Two and Four concern Accuser-1.

Counts Five and Six of the S2 Indictment allege that Ms. Maxwell violated and conspired to violate the federal sex trafficking statute, 18 U.S.C. § 1591. Count Five alleges that Ms. Maxwell conspired with Epstein and others to recruit "a person" knowing that the person "had not attained the age of 18 years and would be caused to engage in a commercial sex act" in violation of 18 U.S.C. § 1591(a). (*Id.* ¶¶ 23-24). Count Six charges Ms. Maxwell with a substantive violation of § 1591(a), claiming she "did recruit, entice, harbor, transport, provide,

¹ Pursuant to the Court's ruling at the November 10, 2021 conference, we will refer to Accuser-3 as "Witness-3." However, for ease of reference, we will refer to these four women collectively as the "Accusers."

and obtain by any means" individuals who were under the age of 18, including Accuser-4, "who were then caused to engage in at least one commercial sex act with Jeffrey Epstein." (*Id.* ¶ 27). Both counts are based on the allegations of Accuser-4 and allege conduct that purportedly occurred "[f]rom at least in or about 2001, up to and including in or about 2004." (*Id.* ¶¶ 23, 27).

B. The Accusers and The Epstein Victim Compensation Fund

Accusers 1 and 2 sued the Epstein Estate and simultaneously applied to the Epstein Victim Compensation Fund. Accuser-4 previously sued Epstein and [REDACTED] and reached a settlement for those claims. Ms. Maxwell was not mentioned in that lawsuit. Accuser-4 and Witness-3 applied to the Epstein Victim Compensation Fund. All four women chose to accept compensation from the Epstein Victim Fund. In its 3500 disclosures, the government has provided statements from the Accusers indicating that Accuser-1 resolved her claims for \$5,000,000; Accuser-2 for \$1,500,000; Witness-3 for \$3,250,000 and Accuser-4 for \$3,500,000.

The Protocol for receiving compensation is attached as 1 to Attachment A. The Protocol requires a written submission. The claims are evaluated per the Protocol which credits "[w]hether there exists any information and/or pertinent findings offered by the appropriate Office of the District Attorney, United States Attorney's Office, or other law enforcement agency." Accordingly, the Protocol credits claimants who have had charges filed against Epstein or any employee of Epstein. The June 2019 indictment against Epstein did not include the allegations of the four Accusers that are contained in the S2 Indictment charging Ms. Maxwell. Under the terms of the Protocol, the Accusers here, and their civil lawyers, stood to benefit if the prosecution against Ms. Maxwell went forward. The Protocol also rewards Accusers who have filed a lawsuit, legal action or claim of sexual abuse against Epstein, or the Estate, which includes any employees or former employees of Epstein. Lawyers for Accuser-2 and Witness-3

were instrumental in creating and structuring the terms of the Protocol. *See* Co-Executors' Corrections to Attorney General's Status Report on Voluntary Compensation Program and Renewed Request for Ruling, *Farmer v. Indyke*, No. 19-cv-10475-LGS-DCF, Dkt. 73-1.

1. Specificity

The Protocol establishes a process that all claimants must follow. The "Claimant" must submit a "Claim Form" with documentation. These claims are then evaluated based on the criteria established in the Protocol. Any deficiencies in the claim are communicated to the Claimant. If a claim is approved, the Administrator sends the Claimant an offer letter and a release. Ms. Maxwell is requesting specific documents identified in the Protocol, including the Claim Form with any supporting documentation, correspondence between the Claimant (or her attorney) and the Administrator, a copy of the check issued to the Claimant, and a copy of the release signed by the Claimant.

2. Admissibility

There are no evidentiary impediments to admissibility. The documents are relevant, authentic, and an appropriate evidentiary foundation can be established under many rules of evidence. The Claim Form is a prior statement of the Accusers about the events alleged in the S2 Indictment. The Claim Forms and subsequent communications are admissible impeachment evidence at trial.

3. Relevance

As previously stated, Accusers 1 and 2 sued the Epstein Estate and simultaneously applied to the Epstein Victim Compensation Fund. Accuser-4 previously sued Epstein and [REDACTED] and reached a settlement for those claims. Ms. Maxwell was not mentioned in that lawsuit. Accuser-4 and Witness-3 applied to the Epstein Victim Compensation Fund. All four women here chose to accept compensation from the Epstein Victim Fund. In its 3500 disclosures

the government has provided statements from the Accusers indicating that Accuser-1 resolved her claims for \$5,000,000; Accuser-2 for \$1,500,000; Witness-3 for \$3,250,000 and Accuser-4 for \$3,500,000.

The Protocol for receiving compensation is attached as Exhibit 1 to Attachment A. The Protocol requires a written submission. The claims are evaluated per the Protocol which credits “[w]hether there exists any information and/or pertinent findings offered by the appropriate Office of the District Attorney, United States Attorney’s Office, or other law enforcement agency.” Accordingly, the Protocol credits claimants who have had charges filed against Epstein or any employee of Epstein. The June 2019 indictment against Epstein did not include the allegations of the four Accusers that are contained in the S2 Indictment charging Ms. Maxwell. Under the terms of the Protocol the Accusers here, and their civil lawyers, stood to benefit if the prosecution against Ms. Maxwell went forward. The Protocol also rewards Accusers who have filed a lawsuit, legal action or claim of sexual abuse against Epstein, or the Estate, which includes any employees or former employees of Epstein. Lawyers for Accuser-2 and Witness-3 were instrumental in creating and structuring the terms of the Protocol. *See* Co-Executors’ Corrections to Attorney General’s Status Report on Voluntary Compensation Program and Renewed Request for Ruling, *Farmer v. Indyke*, No. 19-cv-10475-LGS-DCF, Dkt. 73-1.

The documents sought are obviously relevant -- statements of the Accusers about what they claim happened for purposes of securing a settlement. Similarly, the amount of compensation is also relevant. "Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." *United States v. Malpeso*, 115 F.3d 155, 162–63 (2d Cir. 1997) (quoting Fed. R. Evid. 410).

This trial will turn on the credibility of the individuals accusing Ms. Maxwell of these crimes. The Court should allow broad cross-examination during the trial on general issues of bias and motive for fabrication to protect Ms. Maxwell's rights under the Confrontation Clause of the United States Constitution. A criminal defendant "states a violation of the Confrontation Clause by showing that [s]he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness, and thereby 'to expose to the jury the facts from which jurors could appropriately draw inferences relating to the reliability of the witness.'" *Delaware v. Van Arsdall*, 475 U.S. 673 (1986) (quoting *Davis v. Alaska*, 415 U.S. 308, 318, (1974)). "[T]he exposure of a witness' motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination." *Olden v. Kentucky*, 488 U.S. 227, 231 (1988) (quoting *Davis*, 415 U.S. at 316-17). The possibility of an economic reward is classic impeachment material. *United States v. Bagley*, 473 U.S. 667, 684, (1985).

Full and complete cross-examination of the Accusers is impossible without understanding the complete terms of the agreement with the Epstein Fund, including the claims concerning Ms. Maxwell, as well as others. *Cf. Moore v. Marr*, 254 F.3d 1235, 1244 (10th Cir. 2001) (noting that witnesses' "application for victim compensation payments and application for and receipt of emergency victim compensation payments may well have been 'favorable' within the meaning of *Brady*," requiring government disclosure of exculpatory evidence to criminal defendants); payments and promises made to cooperating witnesses. See also, *United States v. DeLeon*, 428 F. Supp. 3d 675, 697 (D.N.M. 2019); and *United States v. Sedaghaty*, 728 F.3d 885, 898 (9th Cir. 2013), "Impeachment evidence is especially likely to be material when it impugns the testimony" of witnesses "critical to the prosecution's case."

Dated: November 14, 2021

Respectfully submitted,

s/ Jeffrey S. Pagliuca

Jeffrey S. Pagliuca (*pro hac vice*)

Laura A. Menninger

HADDON, MORGAN & FOREMAN P.C.

[REDACTED]

Christian R. Everdell

COHEN & GRESSER LLP

[REDACTED]

Bobbi C. Sternheim

Law Offices of Bobbi C. Sternheim

[REDACTED]

Attorneys for Ghislaine Maxwell

Certificate of Service

I hereby certify that on November 14, 2021, I electronically filed the foregoing *Ms. Maxwell's Motion for an Order Authorizing a Subpoena Pursuant to Fed. R. Crim. P 17(c)(3)* with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

[REDACTED]

U.S. Attorney's Office, SDNY
One Saint Andrew's Plaza
New York, NY 10007

[REDACTED]

s/

[REDACTED]

From: "[REDACTED] (USANYS)" <[REDACTED]>
To: "[REDACTED] (USANYS)" <[REDACTED]>, "[REDACTED] (USANYS)" <[REDACTED]>
Cc: "[REDACTED] (USANYS) [Contractor]" <[REDACTED]>
Subject: RE: [EXTERNAL] Ghislaine Maxwell query
Date: Thu, 18 Nov 2021 16:14:37 +0000

Thanks - we're checking now...

From: [REDACTED] (USANYS) <[REDACTED]>
Sent: Thursday, November 18, 2021 11:10 AM
To: [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>
Cc: [REDACTED] (USANYS) [Contractor] <[REDACTED]>
Subject: FW: [EXTERNAL] Ghislaine Maxwell query
Importance: High

URGENT: Please see below.

From: [REDACTED] (USANYS)
Sent: Thursday, November 18, 2021 11:09 AM
To: Josie Ensor <[REDACTED]>
Subject: RE: [EXTERNAL] Ghislaine Maxwell query

I appreciate you informing me, please let me check to see if that is indeed correct. And **please do not publish any names that may have inadvertently been left unredacted**. I will get back to you. Thanks.

From: Josie Ensor [REDACTED]
Sent: Thursday, November 18, 2021 11:00 AM
To: [REDACTED] (USANYS) <[REDACTED]>
Subject: [EXTERNAL] Ghislaine Maxwell query

Dear [REDACTED]

I hope you are well. I'm writing from the British Telegraph newspaper. I just had one question in the case of Ghislaine Maxwell.

The judge has allowed the witnesses and victims to remain anonymous through the trial, should they so choose. I noticed in a recent filing that the defence left the name of one of the government's proposed witnesses unredacted. As this is now public, would we be allowed to report it?

For your information, it's contained in Document #453 of the United States vs. Maxwell.

Thank you very much for your time,

Josie Ensor

--

Josie Ensor
telegraphmediagroup

US Correspondent

Website: www.telegraph.co.uk/authors/josie-ensor/

Twitter: [@josiensor](https://twitter.com/josiensor)

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From: Nathan NYSD Chambers <[REDACTED]>

To: Jeff Pagliuca <[REDACTED]>, Laura Menninger <[REDACTED]>, "CEverdell" <[REDACTED]>, bcsternheim <[REDACTED]>

Subject: 20cr330, US v. Maxwell

Date: Thu, 18 Nov 2021 18:24:29 +0000

Attachments: 20cr330_Jurors_to_Proceed_to_Peremptory_11.29.21.pdf

Counsel:

Attached please find the list of prospective jurors who will return for the exercise of peremptory strikes on November 29.

Out of an abundance of caution, the jury department will not excuse the remaining jurors from service until the jury is sworn in.

Please confirm receipt.

Sincerely,
Chambers of the Hon. Alison J. Nathan

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

United States of America,

—v—

Ghislaine Maxwell,

Defendant.

20-CR-330 (AJN)

Jurors for Peremptory
11/29/21

Jurors for the exercise of peremptory strikes (11/29 at 8:30 a.m., 58 jurors total)

Courtroom 506

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Courtroom 110

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From: "[REDACTED]" >

To: "[REDACTED]" >

Subject: Birth certificates motion

Date: Fri, 19 Nov 2021 03:06:32 +0000

Attachments: birth_certificates_v1_to_v2.docx; 2021.11.18_Mot_to_admit_birth_certificates_v2.docx

Hey [REDACTED],

Here's a revised birth certificates motion and redline. Thanks!

[REDACTED]

[REDACTED]

Assistant United States Attorney
Southern District of New York

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■

From: testimony <g10695@att.com>

To: [REDACTED],
[REDACTED] >

Subject: [EXTERNAL] 227815.002 USA V GHISLAINE MAXWELL 20 CR 330 (AJN)

Date: Fri, 19 Nov 2021 15:12:50 +0000

Greetings,

The name of the witness assigned to this appearance is [REDACTED], located in **Suffern, NY**. Would you like to have a prep call with the witness prior to the appearance? If so, please provide a few dates and times you're available. We will email a conference call invite.

Thank you,

AT&T Court Appearance Team, JEF
Finance – Global Legal Demand Center

11760 US HWY 1, Suite 300, North Palm Beach FL 33408

o - 800-635-6840 opt 5 | f – 888-938-4715 | TESTIMONY@att.com

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Event: Accepted: United States v. Ghislaine Maxwell, 20 Cr. 330 (AJN)

Start Date: 2021-11-22 23:00:00 +0000

End Date: 2021-11-23 00:00:00 +0000

Location: Zoom Meeting - Meeting ID Below

Class: X-PERSONAL

Comment:

Date Created: 2021-11-19 19:02:05 +0000

Date Modified: 2021-11-19 19:02:05 +0000

Priority: 5

DTSTAMP: 2021-11-19 17:32:24 +0000

Attendee: Stoddart, Allison <



From: "[REDACTED]" <[REDACTED]>
To: "[REDACTED]" <[REDACTED]>, "[REDACTED]"
(USANYS)" <[REDACTED]>, "[REDACTED]"
<[REDACTED]>
Cc: "[REDACTED]" <[REDACTED]>, "[REDACTED]"
<[REDACTED]>

Subject: RE: 3500 production

Date: Tue, 09 Nov 2021 17:25:46 +0000

Attachments: 2021.11.09_Visoski_prep_notes.pdf

Thanks so much, [REDACTED]! Attached is the first bit of TW 3500 from me for today. Would you please save this in Visoski's folders?

From: [REDACTED] <[REDACTED]>
Sent: Tuesday, November 9, 2021 12:25 PM
To: [REDACTED] (USANYS) <[REDACTED]>; [REDACTED]
<[REDACTED]>
Cc: [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED]
<[REDACTED]>
Subject: RE: 3500 production

Hi team – the latest 3500 ([TW Production 6](#) and [NTW 3500 Production 7](#)) are organized and stamped on the shared. I know there will likely be additional 3500 to add today, and I will add those materials when I receive them. The current [index](#) is also attached for your reference. Thanks!

From: [REDACTED] (USANYS) <[REDACTED]>
Sent: Tuesday, November 9, 2021 10:25 AM
To: [REDACTED] <[REDACTED]>; [REDACTED]
<[REDACTED]>
Cc: [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED]
<[REDACTED]>
Subject: 3500 production

[REDACTED],

Because of the Daubert hearing tomorrow, we should get another production of 3500 out later today. Can you work on getting that organized, please? I expect we will have more notes from our meetings today.

Thanks,

[REDACTED]

[REDACTED]
Assistant United States Attorney
United States Attorney's Office

[REDACTED]
[REDACTED]
[REDACTED]
Tel: [REDACTED]

From: [REDACTED] (USANYS) [Contractor]" <[REDACTED]>
To: "[REDACTED] (USANYS)" <[REDACTED]>, [REDACTED] (USANYS)
[Contractor]" <[REDACTED]>
Cc: "[REDACTED]" <[REDACTED]>, "[REDACTED]" <[REDACTED]>
<[REDACTED]>, "[REDACTED]" <[REDACTED]>

Subject: RE: 3500 production

Date: Tue, 09 Nov 2021 17:24:30 +0000

Attachments: U.S._v_Ghislaïne_Maxwell_3500_Index_(Internal).xlsx

Hi team – the latest 3500 ([TW Production 6](#) and [NTW 3500 Production 7](#)) are organized and stamped on the shared. I know there will likely be additional 3500 to add today, and I will add those materials when I receive them. The current [index](#) is also attached for your reference. Thanks!

From: [REDACTED] (USANYS) <[REDACTED]>
Sent: Tuesday, November 9, 2021 10:25 AM
To: [REDACTED] (USANYS) [Contractor] <[REDACTED]>; [REDACTED] (USANYS) [Contractor]
<[REDACTED]>
Cc: [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED]
[REDACTED] <[REDACTED]>
Subject: 3500 production

[REDACTED]

Because of the Daubert hearing tomorrow, we should get another production of 3500 out later today. Can you work on getting that organized, please? I expect we will have more notes from our meetings today.

Thanks,

[REDACTED]
Assistant United States Attorney
United States Attorney's Office
Southern District of New York
One St. Andrew's Plaza
New York, New York 10007
Tel: [REDACTED]

From: "[REDACTED] (USANYS)" <[REDACTED]>

To: "[REDACTED] (NY) (FBI)" <[REDACTED]>

Subject: RE: [EXTERNAL EMAIL] - Fwd: [REDACTED]

Date: Tue, 25 May 2021 17:19:23 +0000

Embedded: FW: _Tova.msg

From: [REDACTED] <[REDACTED]>

Sent: Tuesday, May 25, 2021 12:07 PM

To: [REDACTED] (USANYS) <[REDACTED]>

Subject: RE: [EXTERNAL EMAIL] - Fwd: Tova

Importance: High

[REDACTED], do you have a clean copy of the original email you received from Jason Foy? I don't want to put the whole email chain I received in the case file.

-

On May 24, 2021 10:28 PM, "[REDACTED] (USANYS)" <[REDACTED]> wrote:

Sounds good. Name didn't come up. The OIG agent pulled the attached materials by running the email, and found it comes back to a [REDACTED] from Las Vegas. No criminal history. Materials attached.

From: [REDACTED] <[REDACTED]>

Sent: Monday, May 24, 2021 8:38 PM

To: [REDACTED] (USANYS) <[REDACTED]>

Subject: Re: [EXTERNAL EMAIL] - Fwd: Tova

That is probably a good idea. Thanks.

I assume that name [REDACTED], if it is a real name, hasn't come up elsewhere in the case to your knowledge. I'll run some additional checks tomorrow in the office.

[REDACTED]

-

On May 24, 2021 8:17 PM, "[REDACTED] (USANYS)" <[REDACTED]> wrote:

Hi [REDACTED],

Do you want an NDO on this? Assuming yes, I'll send this over to the court.

[REDACTED]

On May 24, 2021, at 6:40 PM, [REDACTED] <[REDACTED]> wrote:

Thanks!

-
On May 24, 2021 6:39 PM, "[REDACTED] (USANYS)" <[REDACTED]> wrote:
Hi [REDACTED],

AUSAs [REDACTED] and [REDACTED], copied here, will be able to assist. Thanks very much.

On May 24, 2021, at 6:34 PM, [REDACTED] <[REDACTED]> wrote:

[REDACTED],

Could you please forward this to the AUSA assigned to the case?

Please generate a subpoena to Google for subscriber information for the account [REDACTED].

Thank you.

[REDACTED]

[REDACTED]
FBI New York
[REDACTED]

-
----- Forwarded message -----

From: "[REDACTED] (NY) (FBI)" <[REDACTED]>

Date: May 24, 2021 6:23 PM

Subject: Fwd: [EXTERNAL EMAIL] - Fwd [REDACTED]

To: "[REDACTED] (NY) (FBI)" <[REDACTED]>, "[REDACTED] (NY) (FBI)" <[REDACTED]>

Cc:

[REDACTED] and [REDACTED],

Can one of you take a look at this. The victim is one of the Epstein guards.

Thanks,

[REDACTED]

Supervisory Special Agent

[REDACTED] Office

[REDACTED] Cell
[REDACTED]

----- Forwarded message -----

From: "[REDACTED] (USANYS)" <[REDACTED]>

Date: May 24, 2021 5:38 PM

Subject: [EXTERNAL EMAIL] - Fwd: [REDACTED]

To: "[REDACTED] (NY) (FBI)" <[REDACTED]>

Cc: "[REDACTED] (USANYS)" <[REDACTED]>

Hi [REDACTED],

██████ received the below threat, and her attorney has asked that FBI conduct a threat assessment. Her plea to the DP is tomorrow I know that ██████ is on leave, and I asked the case team to also reach out to Det. ██████, although I'm not sure if he's available. Would it be possible to assign someone to do a threat assessment if ██████ cannot do it? Happy to discuss further by phone, and I'm sure the AUSAs would be happy to cut any needed subpoenas. Thanks very much.

██████

Begin forwarded message:

From: Jason Foy <████████████████████>
Sent: Monday, May 24, 2021 1:31 PM
To: ██████████ (USANYS) <████████████████████>; ██████████, ██████████ (USANYS) <████████████████████>
Cc: Eric Sarraga <████████████████████>
Subject: FW: ██████████

██████████,

Good afternoon. At 12:22pm my partner, James Seplowitz, received the email below. I interpret the email as a threat against ██████ safety. I am requesting that the Government use its resources to thoroughly expeditiously investigate the perceived threat and let us know whether it is credible.

Note that I believe the email went to my partner because when people email us from the link on our website, it goes to my partner and not me. Please give me a call to discuss in further detail. Thank you.

Jason

Jason E. Foy

FOY & SEPLOWITZ LLC

██████████
Hackensack, NJ 07601

(O) ██████████

(F) ██████████

www.foyseplowitz.com

From: James Seplowitz <████████████████████>
Sent: Monday, May 24, 2021 12:29 PM
To: Jason Foy <████████████████████>; Eric Sarraga <████████████████████>
Subject: FW: ██████████

From: Vegas Army Vet <████████████████████>
Sent: Monday, May 24, 2021 12:22 PM
To: James Seplowitz <████████████████████>
Subject: ██████████

Go ahead and let your client ██████ know,

THIS ISN'T OVER!! 🐼

From: Jason Foy <[REDACTED]>

To: "[REDACTED] (USANYYS)" <[REDACTED]>, "[REDACTED] (USANYYS)" <[REDACTED]>

Cc: Eric Sarraga <[REDACTED]>

Subject: FW: [REDACTED]

Date: Mon, 24 May 2021 17:31:22 +0000

[REDACTED],

Good afternoon. At 12:22pm my partner, James Sepowitz, received the email below. I interpret the email as a threat against [REDACTED] safety. I am requesting that the Government use its resources to thoroughly expeditiously investigate the perceived threat and let us know whether it is credible.

Note that I believe the email went to my partner because when people email us from the link on our website, it goes to my partner and not me. Please give me a call to discuss in further detail. Thank you.

Jason

Jason E. Foy

FOY & SEPLOWITZ LLC

[REDACTED]

Hackensack, NJ 07601

(O) [REDACTED]

(F) [REDACTED]

[REDACTED]

From: James Sepowitz

Sent: Monday, May 24, 2021 12:29 PM

To: Jason Foy ; Eric Sarraga

Subject: FW: [REDACTED]

From: Vegas Army Vet <[REDACTED]>

Sent: Monday, May 24, 2021 12:22 PM

To: James Sepowitz <[REDACTED]>

Subject: [REDACTED]

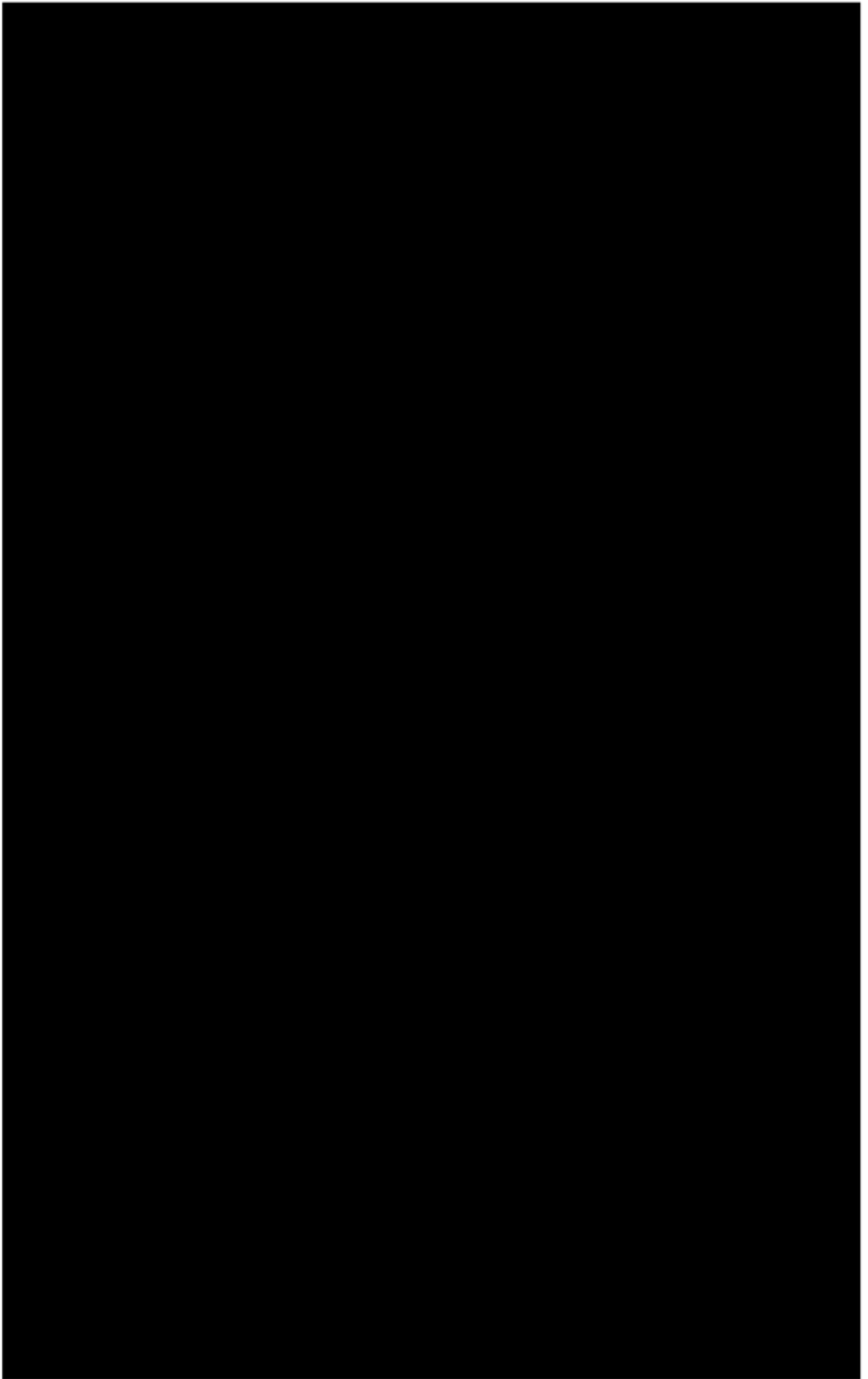
Go ahead and let your client [REDACTED] know,

THIS ISN'T OVER!! 🙄

From:

To:

Bcc:



Subject

Date

Inline-Images

FOR INTERNAL NSD USE ONLY

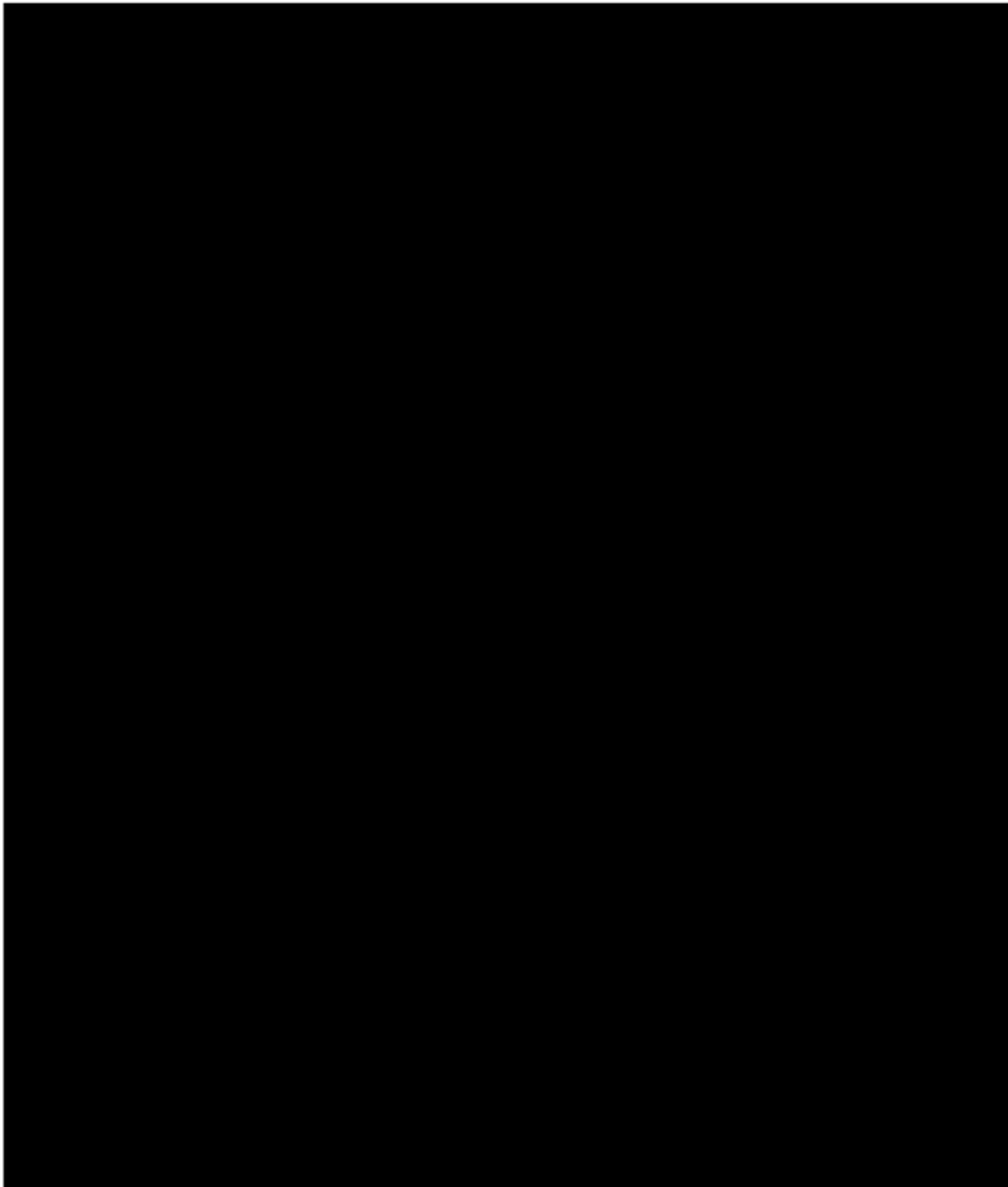
NSD Daily News Brief

December 11, 2017

Warning: NSD Security has identified media outlets are periodically reporting potentially classified documents related to current events. Please be mindful the below web sites may contain links to articles containing classified information. Users should always exercise caution when attempting to view documents hosted by an external website and immediately report a suspicion of classified material to NSD Security and the NSD Technical Solutions Center (formerly the Help Desk). If users access a site containing classified material, please ensure to clear the internet cache (From Internet Explorer, click the Tools Button [top right] + Internet Options, then proceed to Browsing History and delete Temporary Internet Files). Please contact the NSD Service Desk for assistance, [REDACTED]

The following summaries have been copied from the Attorney General's News Briefing for December 11, 2017. The full Attorney General's News Briefing can be accessed [here](#).

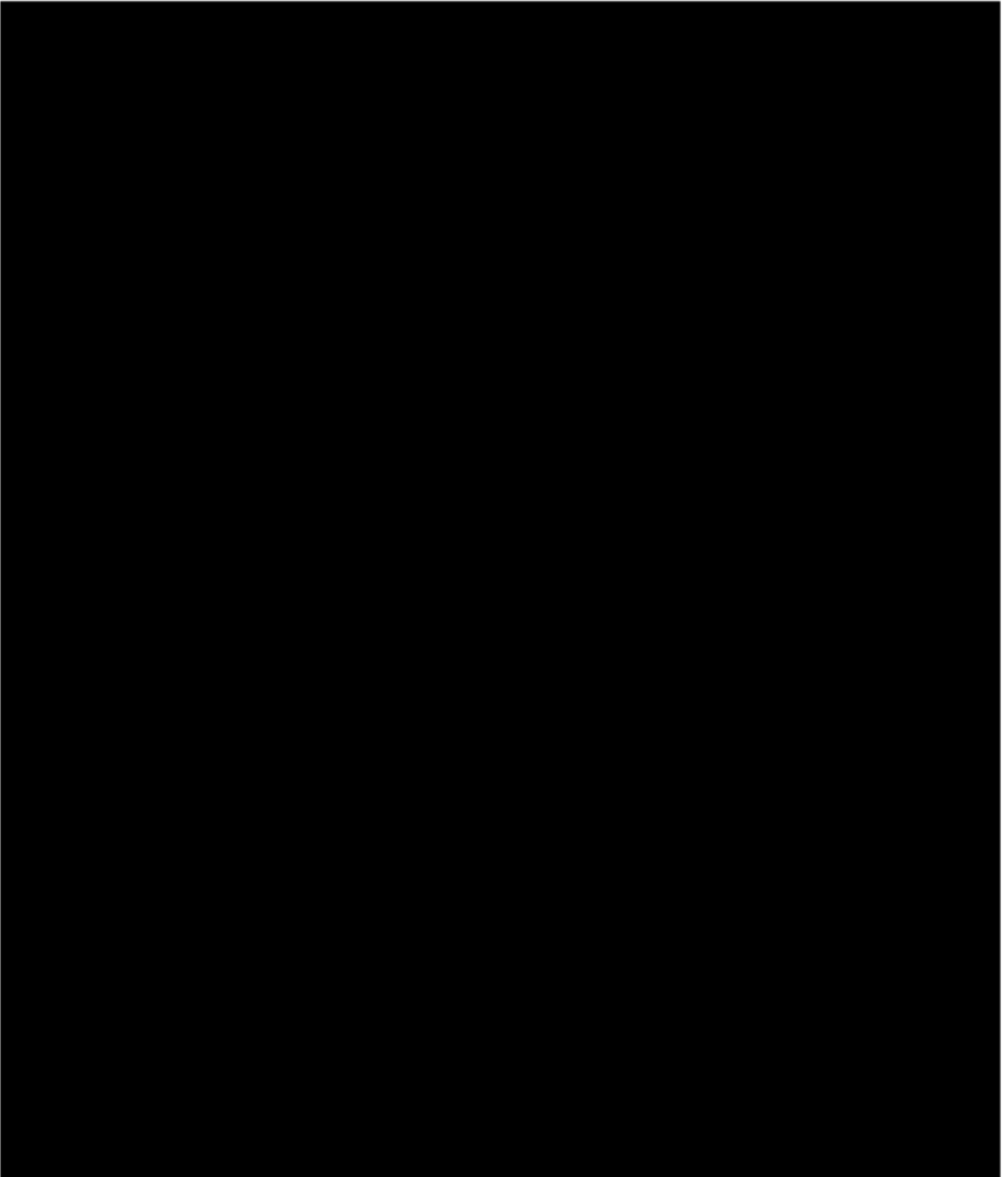
[REDACTED]



Fusion GPS Sought To Link Trump To Convicted Pedophile Epstein.

The [Washington Times](#) (12/10, Scarborough, 624K) reports that in addition to the Russia dossier, Fusion GPS “pitched other stories” about President Trump “to Washington reporters, including an attempt to tie him to a convicted pedophile

who was once buddies with former President Bill Clinton.” The Times cites “journalist sources” who said the firm’s founder, Glenn Simpson “pushed the idea of a close relationship between Mr. Trump and Jeffrey Epstein, who pleaded guilty in 2008 to soliciting sex from an underage girl.” Fusion also “pushed the story that a special email server existed between Trump Tower and Moscow’s Alfa bank, the journalist source said.”



United States District Court
SOUTHERN DISTRICT OF NEW YORK

TO: Registry of Vital Records and Statistics
150 Mt. Vernon Street
1st Floor
Dorchester, MA 02125

GREETINGS:

WE COMMAND YOU that all and singular business and excuses being laid aside, you appear and attend before the United States District Court for the Southern District of New York, 40 Foley Square, in the Borough of Manhattan, City of New York, New York, in the Southern District of New York, at the following date, time and place:

Appearance Date: November 29, 2021 Appearance Time: 9:00 a.m.
Appearance Place: 40 Foley Square, Courtroom 906
to testify and give evidence in the following matter:

United States v. Ghislaine Maxwell, 20 Cr. 330 (AJN)

and not to depart the Court without leave thereof, or of the United States Attorney, and that you bring with you and produce at the above time and place the following:

Birth certificate for the following individual:

- [REDACTED] (DOB: [REDACTED])

Failure to attend and produce any items hereby demanded will constitute contempt of court and will subject you to civil sanctions and criminal penalties, in addition to other penalties of the Law.

DATED: New York, New York
July 19, 2021

/s

AUDREY STRAUSS
*United States Attorney for the
Southern District of New York*

[REDACTED]

Assistant United States Attorney
One St. Andrew's Plaza
New York, New York 10007
Email: [REDACTED]
Telephone: [REDACTED]



From: "[REDACTED]" >

To: "[REDACTED]" >

Subject: Fwd: [EXTERNAL] Re: proffer agreement

Date: Wed, 17 Nov 2021 01:05:07 +0000

Attachments: (U)_Interview_of [REDACTED].pdf

Inline-Images: image001.jpg

For 3500. Thanks!

Begin forwarded message:

From: "[REDACTED]" >

Date: November 16, 2021 at 2:14:28 PM EST

To: "[REDACTED]" >

Subject: [EXTERNAL] Re: proffer agreement

[REDACTED] 302 attached.

[REDACTED]
NYPD / FBI

Child Exploitation Human Trafficking Task Force
[REDACTED]

From: [REDACTED] >

Sent: Thursday, November 11, 2021 12:32 PM

To: [REDACTED] >

Subject: Re: proffer agreement

Here are the notes. Will send 302 when its signed off.

[REDACTED]
NYPD / FBI

Child Exploitation Human Trafficking Task Force
[REDACTED]

From: [REDACTED] >

Sent: Wednesday, November 10, 2021 7:34 PM

To: [REDACTED] >

Subject: RE: proffer agreement

Thanks! Could you please send me the notes and 302?

From: [REDACTED] >

Sent: Wednesday, November 10, 2021 5:42 PM

To: [REDACTED] >

Subject: [EXTERNAL] Re: proffer agreement

[REDACTED]

NYPD / FBI

Child Exploitation Human Trafficking Task Force

[REDACTED]

From: [REDACTED] >

Sent: Tuesday, November 9, 2021 10:30 PM

To: [REDACTED] >

Subject: FW: proffer agreement

Hi [REDACTED], could you please initial this and send it back? Thanks!

From: [REDACTED] <[REDACTED]>

Sent: Tuesday, November 9, 2021 10:24 PM

To: [REDACTED] >

Subject: [EXTERNAL] Re: proffer agreement

Hi [REDACTED],

Please see attached.

Thanks,

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

From: [REDACTED] >

Date: Tuesday, November 9, 2021 at 10:24 AM

To: [REDACTED] <[REDACTED]>

Subject: proffer agreement

Hi [REDACTED],

Attached is the most recent version of the proffer agreement. Could you and your client please initial the agreement and send it back?

Thanks,

EFTA00040161

[REDACTED]

[REDACTED]

Assistant United States Attorney
Southern District of New York

[REDACTED]

New York, NY 10007

[REDACTED]

[REDACTED]



FEDERAL BUREAU OF INVESTIGATION

Date of entry 11/15/2021

██████████, date of birth (DOB) ██████████, was interviewed pursuant to a proffer agreement via video conference. Present for the interview was ██████████ attorney ██████████, along with Assistant United States Attorneys ██████████ and Detective ██████████. After being advised of the identity of the above listed individuals and the nature of the interview, ██████████ provided the following giglio related information:

██████████ is asked about prior testimony. She states that she has never testified in court.

She has given a civil deposition related to the EPSTEIN case. There were 2-3 lawyers there. One of them was ██████████. ██████████ was deposed as a witness. ██████████ told the truth in this deposition. ██████████ has never been deposed otherwise.

██████████ has never given Grand Jury testimony.

██████████ has not given other testimony or sworn statements.

██████████ has not testified in family court.

██████████ was previously married and divorced. She went through a divorce proceeding. Nothing from that divorce proceeding would indicate that she's a liar. ██████████ states she filed the paperwork and her husband never showed to court. The judge granted divorce.

██████████ has never been sued or sued anyone.

██████████ has never been witness in civil case.

██████████ Never been arrested.

██████████ has never been charged with a crime.

Investigation on 11/05/2021 at New York, New York, United States (, Other (Video conference))
File # 50D-NY-3027571 Date drafted 11/14/2021
by ██████████

50D-NY-3027571

Continuation of FD-302 of (U) Interview of [REDACTED], On 11/05/2021, Page 2 of 4

[REDACTED] is then asked about drug use. She states that he Ex-husband gave her white powder on one occasion that she thinks may have been cocaine.

[REDACTED] has never used crack, heroin, meth, LSD, mushrooms, ecstasy, prescription drugs (without prescription), Xanax, percocet, vicodin.

[REDACTED] has never abused any other prescription medication.

[REDACTED] has taken oxycontin with a prescription.

[REDACTED] has never had issues with alcohol abuse.

[REDACTED] has never sold or given drug to someone else.

[REDACTED] first used Marijuana when she was about 17-18 years old. It was offered to her by a man she was dating in Italy. The last time she used it was around 2016-2017. Someone offered it to her at a party. She has never used it regularly. Only used twice.

[REDACTED] has never shoplifted or stolen anything.

[REDACTED] has never used someone else's credit card or check book without their permission.

[REDACTED] has never been involved in a fraud scheme.

[REDACTED] has never been involved in a burglary or a robbery.

[REDACTED] has never cheated on her taxes.

[REDACTED] has never gave fake id or name to law enforcement. She has never lied to law enforcement or filed a false police report.

She has never applied for public benefits.

She has never been a victim or the perpetrator in a fight? She possibly fought with her sister.

[REDACTED] has never been involved in domestic violence.

[REDACTED] has never had issues with child protective services.

[REDACTED] has never possessed child pornography.

50D-NY-3027571

Continuation of FD-302 of (U) Interview of [REDACTED], On 11/05/2021, Page 3 of 4

[REDACTED] has never been involved in prostitution

[REDACTED] has never been involved in a gang.

[REDACTED] has never illegally possessed a gun.

[REDACTED] has never been diagnosed with any mental health issues.

[REDACTED] has never received treatment for mental health.

[REDACTED] is not on any medications.

[REDACTED] has never been treated for substance abuse.

[REDACTED] does not believe she has anything embarrassing about her on the Internet? She had shut down her facebook. She has instagram but under a pseudonym.

[REDACTED] discussed previous [REDACTED]. [REDACTED]

[REDACTED] This was the man who introduced her to EPSTEIN. She thinks that EPSTEIN was aware of this. She was married during this time. She was under 21 and this man took her to night clubs and she would drink. He was involved with EPSTEIN and possibly connecting with MAXWELL on an ocean project. [REDACTED] was married around 18-19 in [REDACTED]. She divorced in [REDACTED]. Her relationship with this man was mostly before meeting EPSTEIN.

[REDACTED] is currently a US citizen. The ceremony of her citizenship was around [REDACTED]. Prior to that she was a permanent resident. During that time period she would have to periodically submit applications to maintain her status. [REDACTED] was a temporary resident prior to that. She was a permanent resident for about 10 years, then she renewed her card and filed to become a citizen. She has never made statements on those applications that were not true. At the time she thought she was answering truthfully but now thinking back, and the relationship to the EPSTEIN case and about committing crimes, she is not sure if I was supposed to disclose that. [REDACTED] may have had a parking ticket that she didn't disclose. [REDACTED] believed she was being truthful at the time of these applications for citizenship.

EFTA00040165

50D-NY-3027571

Continuation of FD-302 of (U) Interview of [REDACTED], On 11/05/2021, Page 4 of 4

[REDACTED] is asked about a criminal history check that shows in [REDACTED] in Washington there was an immigration related arrest.

She states that when she first traveled to US she traveled on a visa that had a time frame on it but also had a number of entrances allowed. She had failed to see the number of entrances portion of her visa. [REDACTED] went home for holidays and when came back the officer flagged that the visa was not valid. About 2 hours later they put her on a plane and sent her home. She then got another visa and then came back to the US. This was not considered a deportation.

From: [REDACTED]

To: [REDACTED]

Subject: [EXTERNAL EMAIL] - Re: Federal Trial Subpoena

Date: Tue, 16 Nov 2021 21:47:36 +0000

Attachments: 2021.11.15_subpoena_to_[REDACTED].pdf

Hi [REDACTED]

I just sent my work the request for the time off. I should be cleared in a day or so.

I'll let you know when I hear back.

Thank you,

[REDACTED]

Sent from my iPhone

On Nov 15, 2021, at 1:24 PM, [REDACTED] wrote:

Hi [REDACTED]

Attached is the trial subpoena. If you have any questions, let us know.

Thanks,

[REDACTED]

Special Agent [REDACTED]

FBI New York Field Office

Child Exploitation/Human Trafficking

Desk [REDACTED]

United States District Court
SOUTHERN DISTRICT OF NEW YORK

TO: [REDACTED]

GREETINGS:

WE COMMAND YOU that all and singular business and excuses being laid aside, you appear and attend before the United States District Court for the Southern District of New York, 40 Foley Square, in the Borough of Manhattan, City of New York, New York, in the Southern District of New York, at the following date, time and place:

Appearance Date: November 29, 2021 Appearance Time: 9:00 a.m.
Appearance Place: 40 Foley Square, Courtroom 318
to testify and give evidence in the following matter:

United States v. Ghislaine Maxwell, 20 Cr. 330 (AJN)

and not to depart the Court without leave thereof, or of the United States Attorney.

Failure to attend and produce any items hereby demanded will constitute contempt of court and will subject you to civil sanctions and criminal penalties, in addition to other penalties of the Law.

DATED: New York, New York
November 15, 2021

DAMIAN WILLIAMS
*United States Attorney for the
Southern District of New York*

[REDACTED]
Assistant United States Attorney
One St. Andrew's Plaza
New York, New York 10007
Email [REDACTED]
Telephone: [REDACTED]



From:

To:

Cc:

Subject: Maxwell testifying witness materials

Date: Sun, 11 Jul 2021 18:10:11 +0000

Attachments: 2021.06.23_ prep_notes.pdf;
2021.06.24_ prep_notes.pdf

Hi Will,

Would you please save the attached notes in the relevant folders for

Thanks,

From: "[REDACTED]" >

To: "[REDACTED]" >, [REDACTED]
[REDACTED] >

Cc: "[REDACTED]" >

Subject: 2021.07.12 Court Subpoena - [REDACTED]

Date: Mon, 12 Jul 2021 17:42:03 +0000

Attachments: 2021.07.12_Court_Subpoena_[REDACTED]

United States District Court
SOUTHERN DISTRICT OF NEW YORK

TO: [REDACTED]

GREETINGS:

WE COMMAND YOU that all and singular business and excuses being laid aside, you appear and attend before the United States District Court for the Southern District of New York, 40 Foley Square, in the Borough of Manhattan, City of New York, New York, in the Southern District of New York, at the following date, time and place:

Appearance Date: November 29, 2021 Appearance Time: 9:00 a.m.
Appearance Place: 40 Foley Square, Courtroom 906
to testify and give evidence in the following matter:

United States v. Ghislaine Maxwell, 20 Cr. 330 (AJN)

and not to depart the Court without leave thereof, or of the United States Attorney, and that you bring with you and produce at the above time and place the following:

PERSONAL APPEARANCE IS REQUIRED

Failure to attend and produce any items hereby demanded will constitute contempt of court and will subject you to civil sanctions and criminal penalties, in addition to other penalties of the Law.

DATED: New York, New York
July 12, 2021


AUDREY STRAUSS
*United States Attorney for the
Southern District of New York*


[REDACTED]
Assistant United States Attorney
One St. Andrew's Plaza
New York, New York 10007
Email: [REDACTED]
Telephone: [REDACTED]


The seal of the United States District Court for the Southern District of New York is visible in the background, featuring an eagle and the text "UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK".

From: "[REDACTED]" <[REDACTED]>

To: Tracy Chapell <[REDACTED]>

Cc: "[REDACTED]" <[REDACTED]>

Subject: RE: Fedex

Date: Tue, 13 Jul 2021 19:34:26 +0000

Attachments: 2008-02-21_SUBPOENA_RESPONSE_-_FEC_FILE___35777_FGJ_07-103(WHB)-TUES._NO._OLY-79.pdf; 2008-02-21_CERTIFICATION_OF_BUSINESS_RECORDS_REGARDING_TRACEY_L._FERRA RA.pdf

Inline-Images: image001.jpg

Thanks, Tracy. We'd like to identify a records custodian who could testify, in the event that it would be necessary.

We found the attached cover letter and certification from FedEx in 2008, in case they are helpful in finding the specific production on your end.

Thanks,

From: Tracy Chapell <[REDACTED]>

Sent: Wednesday, July 7, 2021 11:07 AM

To: [REDACTED] <[REDACTED]>

Cc: [REDACTED] <[REDACTED]>

Subject: RE: Fedex

Good morning,

Please see attached. Let me know if you need anything further.

Thank you,

Tracy Chapell
Senior Paralegal



Federal Express Corporation
Legal Department



From: [REDACTED] <[REDACTED]>

Sent: Tuesday, July 6, 2021 12:33 PM

To: Tracy Chapell <[REDACTED]>

Cc: [REDACTED] <[REDACTED]>

Subject: [EXTERNAL] RE: Fedex

Caution! This email originated outside of FedEx. Please do not open attachments or click links from an unknown or suspicious origin.

Hi Tracy,

We'd like someone to sign an affidavit for now, but we'd also like to identify someone who could testify at trial if need be. The trial is for Ghislaine Maxwell, scheduled to start in New York in November.

I've attached a proposed declaration, though if FedEx has its own standard format, that will likely work too.

Thanks,

From: Tracy Chapell <[REDACTED]>

Sent: Tuesday, July 6, 2021 10:49 AM

To: [REDACTED] <[REDACTED]>

Cc: [REDACTED] <[REDACTED]>

Subject: RE: Fedex

Good morning,

I have reviewed the records and they seem to be our records. Are you needing someone to sign an affidavit or appear in person at trial? (is this "the" Jeffrey Epstein?)

Thank you,

Tracy Chapell
Senior Paralegal



Federal Express Corporation
Legal Department



From: [REDACTED] <[REDACTED]>

Sent: Tuesday, July 6, 2021 9:25 AM

To: Tracy Chapell <[REDACTED]>

Cc: [REDACTED] <[REDACTED]>

Subject: [EXTERNAL] RE: Fedex

Caution! This email originated outside of FedEx. Please do not open attachments or click links from an unknown or suspicious origin.

Hi Tracy,

I hope you had a nice weekend, and thanks again for the call last week. I've attached the FedEx records for which we are looking for a records custodian. According to a log, the U.S. Attorney's Office for the Southern District of Florida sent

EFTA00040173

FedEx a subpoena in February 2008, and the FedEx point of contact was Tracy Ferrara. If we find any front matter, like an internal tracking number, we'll let you know.

Thanks again for your assistance with this. Please let me know if you have any questions.

[REDACTED]

[REDACTED]
Assistant United States Attorney
Southern District of New York
1 Saint Andrews Plaza
New York, New York 10007
[REDACTED]
[REDACTED]

From: [REDACTED]
Sent: Friday, July 2, 2021 11:08 AM
To: [REDACTED] (CTR) <[REDACTED]>; [REDACTED]
Subject: RE: Fedex

Thanks, [REDACTED]!

Tracy, would you mind giving me a call when you have a chance? My number is [REDACTED]

Thanks,
[REDACTED]

From: [REDACTED] (CTR) <[REDACTED]>
Sent: Friday, July 2, 2021 11:05 AM
To: tracy.chapell@fedex.com; [REDACTED] <[REDACTED]>
Subject: Fedex

Hi Tracy,

You have been extremely helpful in the past with me I was hoping you can lend assistance to the assistant United States attorney, [REDACTED], I'm working with. [REDACTED] is ccd on this email, if you want to reply and see what she can help with.

Thank you in advance for al your help,
[REDACTED]

Sent with BlackBerry Work
(www.blackberry.com)



VIA OVERNIGHT

February 21, 2008

AUSA [REDACTED]
500 S. Australian Avenue, Suite 400
West Palm Beach, FL 33401-6235

**RE: Subpoena Response – FEC File # 35777
FGJ 07-103(WHB)-Tues./No. OLY-79**

Dear [REDACTED]:

Per your request, I submit the enclosed CD in PDF format with invoices and an Excel spreadsheet which contains a compilation of business records related to your request. Should you require copies of the delivery records, please respond to me in writing identifying the tracking numbers and ship dates you desire.

Please be advised the delivery records reflect shipments made in the past 25 months. Any searches performed prior to 25 months is manual process of delivery records. Please advise the address and specific type frame requested for additional searches.

Thank you for your cooperation in this matter.

Very truly yours,

FEDEX EXPRESS

[REDACTED]
Senior Paralegal - Litigation

FAX: [REDACTED]

Email: [REDACTED]

/tlf/713000

Enclosure



Certification of Business Records

I, Tracey L. Ferrara, the undersigned, declare that I am employed by FedEx Express in the Legal Department as Custodian of Records and by reason of my position am authorized and qualified to make this declaration.

I further declare that the **documents** are original records or true copies of records that were:

1. made at or near the time of the occurrence of the matters described in the documents, by (or from information transmitted by) a person with knowledge of those matters;
2. kept in the course of regularly conducted business activity; and
3. made by the said business activity as a regular practice.

I declare, certify, verify, and state under penalty of perjury that the foregoing is true and correct.

Date of Execution: February 21, 2008

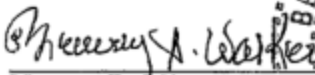
Place of Execution:

FedEx Express
Legal Department
3620 Hacks Cross Road
Building B - Third Floor
Memphis, TN 38125


Tracey L Ferrara, Custodian of Records
FedEx Express

SWORN TO AND SUBSCRIBED before me on this 21st day of February, 2008.

My commission expires:


Notary Public





U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

July 13, 2021

VIA FEDERAL EXPRESS

MDC—Metropolitan Detention Center
Legal Department
80 29th Street
Brooklyn, NY 11232

Re: *United States v. Ghislaine Maxwell, 20 Cr. 330 (AJN)*

The password for the drive containing discovery materials pertinent to Ghislaine Maxwell
(02879-509) is [REDACTED]

Very truly yours,

AUDREY STRAUSS
United States Attorney

by:

[REDACTED]
Assistant United States Attorneys
[REDACTED]



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

July 13, 2021

VIA FEDERAL EXPRESS

MDC—Metropolitan Detention Center
Legal Department
80 29th Street
Brooklyn, NY 11232

Re: *United States v. Ghislaine Maxwell, 20 Cr. 330 (AJN)*

Enclosed is discovery pertinent to the following inmate:

- Ghislaine Maxwell: 02879-509

Please allow her access to the materials enclosed.

Very truly yours,

AUDREY STRAUSS
United States Attorney

by

Assistant United States Attorneys
[Redacted]

Enclosure

From:

To:

Subject: [REDACTED] FedEx

Date: Sun, 18 Jul 2021 22:11:37 +0000

Attachments: EPS001-23989-24003.pdf; EPS001-24013-24033.pdf

I found two additional FedEx records for [REDACTED]. In the first PDF, the package to her is on page 5. In the second PDF, which was already flagged as hot on the shared, she is on page 8 under [REDACTED] and before [REDACTED].

[REDACTED]
Assistant United States Attorney
United States Attorney's Office
Southern District of New York
One St. Andrew's Plaza
New York, New York 10007
[REDACTED]



JEFFREY E EPSTEIN
457 MADISON AVE
NEW YORK NY 10022-6843

Billing Account Shipping Address:
JEFFREY E EPSTEIN
457 MADISON AVE
NEW YORK NY 10022-6843 US

Invoice Number: 4-495-33932

Invoice Date: Dec 16, 2002

Account Number: [REDACTED]

Page: 1 of 15

FedEx Tax ID: [REDACTED]

Invoice Questions?

Contact FedEx Revenue Services

Phone: (800) 622-1147 M-F 7-6 (CST)

Fax: (800) 548-3020

Internet: www.fedex.com

Invoice Summary Dec 16, 2002

FedEx Express Services

Transportation Charges	430.15
Base Discount	-45.70
Special Handling Charges	43.53

Total Charges.....USD\$. 427.98

FedEx Ground Services

Base Charges	5.15
Other Charges	11.06

Total Charges.....USD\$. 16.21

TOTAL THIS INVOICE.....USD \$ 444.19

You saved \$45.70 in discounts this period!

The FedEx Ground accounts referenced in this invoice have been transferred and assigned to, are owned by, and are payable to FedEx Express.

To ensure proper credit, please return this portion with your payment to FedEx.
Please do not staple or fold. Please make your check payable to FedEx.

☐ For change of address, check here and complete form on reverse side.

Remittance Advice

Your payment is due by Dec 31, 2002

Invoice Number	Account Number	Amount Due
4-495-33932	[REDACTED]	USD \$ 444.19

114420814495339329900004441907

SP 01 000001 97702 A 1 ASNGLP

JEFFREY E EPSTEIN
457 MADISON AVE
NEW YORK NY 10022-6843



FedEx
P.O. Box 371461
Pittsburgh PA 15250-7461

EFTA00040180



Invoice Number: 4-495-33932

Invoice Date: Dec 16, 2002

Account Number: [REDACTED]

Page: 2 of 15

Adjustment Request FAX TO (800) 548-3020

Tracking No./Airbill No.	Reason Code	Explanation

BEFORE YOU FAX

Please include detailed explanation for each adjustment request.

Remember to include recipient's account number or third party's account number if applicable.

From:

Name

Date

()

Business Phone

()

Business Fax

REASON CODE KEY

Reason Code	Description
DUP	Duplicate Billing
PND	Shipment Never Sent
RATE	Incorrect Rates or Pieces
RRA	Rebill Recipient - Include Recipient's Account No.
RSA	Rebill Sender
RTA	Rebill Third Party - Include Third Party's Account No.
SUR	Incorrect Surcharge - Please Explain
OTHR	Other - Please Explain

This form cannot be used to request invoice Adjustments due to Service Failures or lack of a POD.

To request adjustments for Service Failures or lack of a POD, please call 1-800-622-1147,
visit our internet site at www.fedex.com or register for FIO.



Federal Express

Please indicate change in address for the account # listed below:

☐

Physical Address

☐

Billing Address

☐

Mailing Address

Account Number: 1144-2081-6

Name:

Address:

Apt. / Suite:

City:

State:

Zip:

Phone: ()

Fax: ()

Authorizing Signature:

EFTA00040181



Invoice Number: 4-495-33932

Invoice Date: Dec 16, 2002

Account Number: [REDACTED]

Page: 3 of 15

FedEx Express Shipment Summary by Payment Type

Original			
Shipper			
Number of Shipments		20	
Transportation Charges		354.90	
Base Discount		-38.17	
Special Handling Charges		40.82	
TOTAL	USD \$	357.55	
Number of Shipments			20
Total Charges		USD \$	357.55
Third Party			
Number of Shipments		1	
Transportation Charges		75.25	
Base Discount		-7.53	
Special Handling Charges		2.71	
TOTAL	USD \$	70.43	
Number of Shipments			1
Total Charges		USD \$	70.43
TOTAL SHIPMENTS			21
TOTAL CHARGES		USD \$	427.98





Invoice Number: 4-495-33932

Invoice Date: Dec 16, 2002

Account Number: [REDACTED]

Page: 4 of 15

FedEx Express Shipment Detail By Payment Type (Original)

Picked up: Nov 14, 2002

Payor: Shipper

Reference: NO REFERENCE INFORMATION

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.

Distance Based Pricing, Zone 2

Package sent from: 33461 zip code

Tracking ID	828694901680	Sender	JEFFREY E EPSTEIN	Recipient	[REDACTED]
Service Type	FedEx Express Saver				
Package Type	Customer Packaging		457 MADISON AVE		
Zone	2		NEW YORK NY 10022-6843 US		
Packages	1				
Weight	2.0 lbs, 0.9 kgs	Transportation Charge			7.80
Delivered	Nov 15, 2002 09:23	Discount			-0.78
Svc Area	A2	Fuel Surcharge			0.28
Signed by	[REDACTED]				
FedEx Use	534631410/07167/_	Total Transportation Charges		USD \$	7.30

Dropped off: Nov 14, 2002

Payor: Shipper

Reference: NO REFERENCE INFORMATION

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.

Distance Based Pricing, Zone 6

Package sent from: 33480 zip code

FedEx has audited this shipment for correct packages, weight, and service. Any changes made are reflected in the invoice amount.

Tracking ID	837574506371	Sender	JEFFREY E EPSTEIN	Recipient	[REDACTED]
Service Type	FedEx Priority Overnight				
Package Type	FedEx Pak		457 MADISON AVE		
Zone	6		NEW YORK NY 10022-6843 US		
Packages	1				
Weight	2.0 lbs, 0.9 kgs	Transportation Charge			27.50
Delivered	Nov 15, 2002 09:25	Discount			-2.75
Svc Area	A1	Fuel Surcharge			0.99
Signed by	[REDACTED]				
FedEx Use	346081720/01574/_	Total Transportation Charges		USD \$	25.74

**Invoice Number: 4-495-33932**

Invoice Date: Dec 16, 2002

Account Number: [REDACTED]

Page: 5 of 15

FedEx Express Shipment Detail By Payment Type (Original)**Picked up: Dec 03, 2002****Payor: Shipper****Reference: NO REFERENCE INFORMATION**

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.

The delivery commitment for FedEx 2day to homes or private residences (including home offices) is 7 P.M. the second business day for A1, A2, AA, A3, AM, PM, 01 and RM service areas.

Distance Based Pricing, Zone 6

Package sent from: 10021 zip code

FedEx has audited this shipment for correct packages, weight, and service. Any changes made are reflected in the invoice amount.

Tracking ID	837133955277	Sender	[REDACTED]	Recipient	[REDACTED]
Service Type	FedEx 2Day				
Package Type	FedEx Pak		JEFFREY E EPSTEIN		
Zone	6		457 MADISON AVE		
Packages	1		NEW YORK NY 10022-6843 US		
Weight	2.0 lbs, 0.9 kgs				
Delivered	Dec 05, 2002 16:35				
Svc Area	2R	Transportation Charge			10.50
Signed by	[REDACTED]	Discount			-1.05
FedEx Use	340115650/06068/...	Fuel Surcharge			0.38
		Residential Delivery			1.35
Total Transportation Charges					USD \$ 11.18

Picked up: Dec 03, 2002**Payor: Shipper****Reference: NO REFERENCE INFORMATION**

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.

Distance Based Pricing, Zone 7

Package sent from: 10021 zip code

Release signature on file.

Tracking ID	837133955288	Sender	[REDACTED]	Recipient	[REDACTED]
Service Type	FedEx Priority Overnight				
Package Type	Customer Packaging		JEFFREY E EPSTEIN		
Zone	7		457 MADISON AVE		
Packages	1		NEW YORK NY 10022-6843 US		
Weight	10.0 lbs, 4.5 kgs				
Delivered	Dec 04, 2002 17:14				
Svc Area	RM	Transportation Charge			51.75
Signed by	7279236	Discount			-5.18
FedEx Use	340115640/01596/02	Fuel Surcharge			1.86
		Residential Delivery			1.35
		Delivery Area Surcharge			1.50
Total Transportation Charges					USD \$ 51.28



Invoice Number: 4-495-33932

Invoice Date: Dec 16, 2002

Account Number: [REDACTED]

Page: 6 of 15

FedEx Express Shipment Detail By Payment Type (Original)

Picked up: Dec 09, 2002

Payor: Shipper

Reference: NO REFERENCE INFORMATION

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.

Distance Based Pricing, Zone 7

The delivery commitment for Express Saver Packages to homes or private residences (Including home offices) is 7PM the third business day for all regions.

Release signature on file.

InternetShip		Sender	Recipient
Tracking ID	790156856328	[REDACTED]	[REDACTED]
Service Type	FedEx Express Saver	JEFFREY E EPSTEIN	
Package Type	FedEx Envelope	457 MADISON AVE	
Zone	7	NEW YORK NY 10022-6843 US	
Packages	1		
Weight	1.0 lbs, 0.5 kgs	Transportation Charge	8.80
Delivered	Dec 11, 2002 14:19	Discount	-0.88
Svc Area	3R	Fuel Surcharge	0.32
Signed by	7279326	Residential Delivery	1.35
FedEx Use	523812433/00834/02	Delivery Area Surcharge	1.50
Total Transportation Charges			USD \$ 11.09

Picked up: Dec 09, 2002

Payor: Shipper

Reference: NO REFERENCE INFORMATION

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.

Distance Based Pricing, Zone 4

InternetShip		Sender	Recipient
Tracking ID	792147100585	[REDACTED]	[REDACTED]
Service Type	FedEx Priority Overnight	JEFFREY E EPSTEIN	
Package Type	Customer Packaging	457 MADISON AVE	
Zone	4	NEW YORK NY 10022-6843 US	
Packages	1		
Weight	2.0 lbs, 0.9 kgs	Transportation Charge	23.25
Delivered	Dec 10, 2002 11:03	Discount	-2.33
Svc Area	A2	Fuel Surcharge	0.84
Signed by	[REDACTED]		
FedEx Use	523897834/01530/_	Total Transportation Charges	USD \$ 21.76

Picked up: Dec 09, 2002

Payor: Shipper

Reference: NO REFERENCE INFORMATION

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.

Distance Based Pricing, Zone 2

Package sent from: 10021 zip code

Tracking ID	837133955358	Sender	Recipient
Service Type	FedEx 2Day	G MAXWELL	[REDACTED]
Package Type	FedEx Pak	JEFFREY E EPSTEIN	
Zone	2	457 MADISON AVE	
Packages	1	NEW YORK NY 10022-6843 US	
Weight	5.0 lbs, 2.3 kgs	Transportation Charge	9.00
Delivered	Dec 10, 2002 12:31	Fuel Surcharge	0.32
Svc Area	A1	Courier Pickup Charge	0.00
Signed by	[REDACTED]	Discount	-0.90
FedEx Use	347194760/05980/_	Total Transportation Charges	USD \$ 8.42

EFTA00040185



Invoice Number: 4-495-33932

Invoice Date: Dec 16, 2002

Account Number: [REDACTED]

Page: 7 of 15

FedEx Express Shipment Detail By Payment Type (Original)

Picked up: Dec 09, 2002

Payor: Shipper

Reference: NO REFERENCE INFORMATION

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.

Distance Based Pricing, Zone 6

Package sent from: 75041 zip code

FedEx has audited this shipment for correct packages, weight, and service. Any changes made are reflected in the invoice amount.

Tracking ID	837169384061	Sender	JEFFREY E EPSTEIN	Recipient	EDWINA SIMMONDS
Service Type	FedEx Priority Overnight		457 MADISON AVE		
Package Type	FedEx Pak		NEW YORK NY 10022-6843 US		
Zone	6				
Packages	1				
Weight	1.0 lbs, 0.5 kgs	Transportation Charge			24.50
Delivered	Dec 10, 2002 09:25	Discount			-2.45
Svc Area	A1	Fuel Surcharge			0.88
Signed by	.SIMMONS	Courier Pickup Charge			0.00
FedEx Use	345091460/01574/_				
Total Transportation Charges				USD \$	22.93

Picked up: Dec 09, 2002

Payor: Shipper

Reference: NO REFERENCE INFORMATION

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.

Distance Based Pricing, Zone 7

Tracking ID	837169385002	Sender	JEFFREY E EPSTEIN	Recipient	LLOYD MILTON
Service Type	FedEx Priority Overnight		457 MADISON AVE		
Package Type	FedEx Envelope		NEW YORK NY 10022-6843 US		
Zone	7				
Packages	1				
Weight	1.0 lbs, 0.5 kgs	Transportation Charge			16.75
Delivered	Dec 10, 2002 15:14	Discount			-2.68
Svc Area	RM	Fuel Surcharge			0.56
Signed by	[REDACTED]	Delivery Area Surcharge			1.50
FedEx Use	346237740/00241/_				
Total Transportation Charges				USD \$	16.13

Dropped off: Dec 10, 2002

Payor: Shipper

Reference: MG-M PERSONAL

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.

Distance Based Pricing, Zone 7

Package sent from: 87501 zip code

Tracking ID	836663867808	Sender	MURRAY GELL-MANN	Recipient	EDWINA SIMMONDS
Service Type	FedEx Standard Overnight		JEFFREY E EPSTEIN		
Package Type	FedEx Envelope		457 MADISON AVE		
Zone	7		NEW YORK NY 10022-6843 US		
Packages	1				
Weight	1.0 lbs, 0.5 kgs	Transportation Charge			14.75
Delivered	Dec 11, 2002 12:17	Discount			-2.36
Svc Area	A1	Fuel Surcharge			0.50
Signed by	.SIMMONS				
FedEx Use	346030810/00255/_				
Total Transportation Charges				USD \$	12.89

**Invoice Number: 4-495-33932**

Invoice Date: Dec 16, 2002

Account Number: [REDACTED]

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FedEx Express Shipment Detail By Payment Type (Original)**Picked up: Dec 10, 2002****Payor: Shipper****Reference: NO REFERENCE INFORMATION**

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.

Distance Based Pricing, Zone 8

Package sent from: 10021 zip code

Tracking ID	837133955314	<u>Sender</u>	<u>Recipient</u>
Service Type	FedEx Standard Overnight	G MAXWELL	ISABEL MAXWELL
Package Type	FedEx Box	JEFFREY E EPSTEIN	[REDACTED]
Zone	8	457 MADISON AVE	
Packages	1	NEW YORK NY 10022-6843 US	
Weight	3.0 lbs, 1.4 kgs		
Delivered	Dec 11, 2002 13:40	Transportation Charge	28.75
Svc Area	A1	Discount	-2.88
Signed by	I MAXWELL	Declared Value Charge	0.00
Dec. Value	USD 20.00	Fuel Surcharge	1.03
FedEx Use	346204710/01415/_	Courier Pickup Charge	0.00
		Residential Delivery	1.35
Total Transportation Charges			USD \$ 28.25

Picked up: Dec 10, 2002**Payor: Shipper****Reference: NO REFERENCE INFORMATION**

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.

Distance Based Pricing, Zone 8

Package sent from: 10021 zip code

Tracking ID	837133955380	<u>Sender</u>	<u>Recipient</u>
Service Type	FedEx 2Day	G MAXWELL	RON BURCKLE
Package Type	Customer Packaging	JEFFREY E EPSTEIN	[REDACTED]
Zone	8	457 MADISON AVE	
Packages	1	NEW YORK NY 10022-6843 US	
Weight	5.0 lbs, 2.3 kgs		
Delivered	Dec 12, 2002 08:38	Transportation Charge	16.75
Svc Area	A1	Discount	-1.68
Signed by	[REDACTED]	Fuel Surcharge	0.60
FedEx Use	346204710/06112/_	Courier Pickup Charge	0.00
Total Transportation Charges			USD \$ 15.67



Invoice Number: 4-495-33932

Invoice Date: Dec 16, 2002

Account Number: [REDACTED]

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FedEx Express Shipment Detail By Payment Type (Original)

Picked up: Dec 10, 2002

Payor: Shipper

Reference: NO REFERENCE INFORMATION

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.

The delivery commitment for FedEx 2day to homes or private residences (including home offices) is 7 P.M. the second business day for A1, A2, AA, A3, AM, PM, 01 and RM service areas.

Distance Based Pricing, Zone 7

Package sent from: 10021 zip code

Release signature on file.

Tracking ID 837133955406
Service Type FedEx 2Day
Package Type Customer Packaging
Zone 7
Packages 1
Weight 5.0 lbs, 2.3 kgs
Delivered Dec 12, 2002 14:32
Svc Area 2R
Signed by 7279236
FedEx Use 346204710/06090/02

Sender
[REDACTED]
JEFFREY E EPSTEIN
457 MADISON AVE
NEW YORK NY 10022-6843 US

Recipient

Transportation Charge	15.75
Discount	-1.58
Fuel Surcharge	0.57
Courier Pickup Charge	0.00
Residential Delivery	1.35
Delivery Area Surcharge	1.50

Total Transportation Charges	USD \$	17.59
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Picked up: Dec 11, 2002

Payor: Shipper

Reference: NO REFERENCE INFORMATION

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.

Distance Based Pricing, Zone 4

InternetShip
Tracking ID 791993571675
Service Type FedEx 2Day
Package Type FedEx Envelope
Zone 4
Packages 1
Weight 1.0 lbs, 0.5 kgs
Delivered Dec 13, 2002 10:02
Svc Area A2
Signed by C.SNYDER
FedEx Use 523230147/01110/...

Sender
[REDACTED]
JEFFREY E EPSTEIN
457 MADISON AVE
NEW YORK NY 10022-6843 US

Recipient
PEG UGLAND
N. A. PROPERTY
[REDACTED]

Transportation Charge	8.50
Discount	-0.85
Fuel Surcharge	0.31

Total Transportation Charges	USD \$	7.96
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EFTA00040188



Invoice Number: 4-495-33932

Invoice Date: Dec 16, 2002

Account Number: [REDACTED]

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FedEx Express Shipment Detail By Payment Type (Original)

Picked up: Dec 11, 2002

Payor: Shipper

Reference: NO REFERENCE INFORMATION

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.

Distance Based Pricing, Zone 8

FedEx has audited this shipment for correct packages, weight, and service. Any changes made are reflected in the invoice amount.

We calculated your charges based on a dimensional weight of 22.0 lbs., 24" x 16" x 11", divided by 194.

Tracking ID	82869489837	Sender	Recipient
Service Type	FedEx Express Saver	J ESPTEIN	[REDACTED]
Package Type	Customer Packaging	JEFFREY E EPSTEIN	
Zone	8	457 MADISON AVE	
Packages	1	NEW YORK NY 10022-6843 US	
Weight	15.0 lbs, 6.8 kgs		
Delivered	Dec 13, 2002 10:45	Transportation Charge	43.35
Svc Area	A1	Discount	-4.34
Signed by	[REDACTED]	Fuel Surcharge	1.56
FedEx Use	347150410/07179/_		
		Total Transportation Charges	USD \$ 40.57

Picked up: Dec 11, 2002

Payor: Shipper

Reference: NO REFERENCE INFORMATION

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.

Distance Based Pricing, Zone 2

Tracking ID	828694900926	Sender	Recipient
Service Type	FedEx Express Saver	J EPSTEIN	[REDACTED]
Package Type	Customer Packaging	JEFFREY E EPSTEIN	
Zone	2	457 MADISON AVE	
Packages	1	NEW YORK NY 10022-6843 US	
Weight	2.0 lbs, 0.9 kgs		
Delivered	Dec 13, 2002 14:33	Transportation Charge	7.80
Svc Area	A1	Discount	-0.78
Signed by	[REDACTED]	Fuel Surcharge	0.28
FedEx Use	347150410/07167/_		
		Total Transportation Charges	USD \$ 7.30

Picked up: Dec 11, 2002

Payor: Shipper

Reference: NO REFERENCE INFORMATION

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.

Distance Based Pricing, Zone 2

The delivery commitment for Express Saver Packages to homes or private residences (Including home offices) is 7PM the third business day for all regions.

Tracking ID	828694900937	Sender	Recipient
Service Type	FedEx Express Saver	J EPSTEIN	[REDACTED]
Package Type	Customer Packaging	JEFFREY E EPSTEIN	
Zone	2	457 MADISON AVE	
Packages	1	NEW YORK NY 10022-6843 US	
Weight	5.0 lbs, 2.3 kgs		
Delivered	Dec 13, 2002 12:33	Transportation Charge	8.55
Svc Area	3R	Discount	-0.86
Signed by	[REDACTED]	Fuel Surcharge	0.31
FedEx Use	347150410/07167/_	Residential Delivery	1.35
		Total Transportation Charges	USD \$ 9.35

EFTA00040189



Invoice Number: 4-495-33932

Invoice Date: Dec 16, 2002

Account Number: [REDACTED]

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FedEx Express Shipment Detail By Payment Type (Original)

Picked up: Dec 11, 2002

Payor: Shipper

Reference: NO REFERENCE INFORMATION

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.

Distance Based Pricing, Zone 8

The delivery commitment for Express Saver Packages to homes or private residences (Including home offices) is 7PM the third business day for all regions.

1st attempt Dec 13, 2002 at 10:48 AM.

Incorrect recipient address.

Original address [REDACTED]

FedEx has audited this shipment for correct packages, weight, and service. Any changes made are reflected in the invoice amount.

Tracking ID	828694900959	Sender	Recipient
Service Type	FedEx Express Saver	J EPSTEIN	[REDACTED]
Package Type	Customer Packaging	JEFFREY E EPSTEIN	[REDACTED]
Zone	8	457 MADISON AVE	[REDACTED]
Packages	1	NEW YORK NY 10022-6843 US	
Weight	2.0 lbs, 0.9 kgs		
Delivered	Dec 13, 2002 11:19	Transportation Charge	10.55
Svc Area	3R	Residential Delivery	1.35
Signed by	[REDACTED]	Discount	-1.06
FedEx Use	347150410/07179/03	Address Correction	10.00
		Fuel Surcharge	0.38
Total Transportation Charges			USD \$ 21.22

Picked up: Dec 11, 2002

Payor: Shipper

Reference: NO REFERENCE INFORMATION

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.

Distance Based Pricing, Zone 2

The delivery commitment for Express Saver Packages to homes or private residences (Including home offices) is 7PM the third business day for all regions.

Release signature on file.

Tracking ID	828694900992	Sender	Recipient
Service Type	FedEx Express Saver	J EPSTEIN	[REDACTED]
Package Type	Customer Packaging	JEFFREY E EPSTEIN	[REDACTED]
Zone	2	457 MADISON AVE	[REDACTED]
Packages	1	NEW YORK NY 10022-6843 US	
Weight	2.0 lbs, 0.9 kgs		
Delivered	Dec 13, 2002 10:27	Transportation Charge	7.80
Svc Area	3R	Discount	-0.78
Signed by	[REDACTED]	Fuel Surcharge	0.28
FedEx Use	347150410/07167/02	Residential Delivery	1.35
Total Transportation Charges			USD \$ 8.65

EFTA00040190



Invoice Number: 4-495-33932

Invoice Date: Dec 16, 2002

Account Number: [REDACTED]

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FedEx Express Shipment Detail By Payment Type (Original)

Dropped off: Dec 11, 2002

Payor: Shipper

Reference: NO REFERENCE INFORMATION

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.

Distance Based Pricing, Zone 3

Package sent from: 02155 zip code

Tracking ID	836663864956	Sender	Recipient
Service Type	FedEx Standard Overnight	ALAN DERSHOWITZ	[REDACTED]
Package Type	FedEx Envelope	JEFFREY E EPSTEIN	[REDACTED]
Zone	3	457 MADISON AVE	
Packages	1	NEW YORK NY 10022-6843 US	
Weight	1.0 lbs, 0.5 kgs		
Delivered	Dec 12, 2002 12:10	Transportation Charge	12.50
Svc Area	A1	Discount	-2.00
Signed by	.MAXWELL	Fuel Surcharge	0.42
FedEx Use	345268500/00211/_	Residential Delivery	1.35
Total Transportation Charges			USD \$ 12.27
Shipment Detail Subtotal			USD \$ 357.55

Picked up: Dec 04, 2002

Payor: Third Party

Reference: NO REFERENCE INFORMATION

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.

Distance Based Pricing, Zone 5

1st attempt Dec 05, 2002 at 12:01 AM.

Weather delay - Snow.

Tracking ID	809045736255	Sender	Recipient
Service Type	FedEx Priority Overnight	B BONNETT	NICK SIMMONS
Package Type	Customer Packaging	LONDON FOG COMPANY	EPSHEIN INTEREST
Zone	5	505 BRIMHALL AVE	[REDACTED]
Packages	1	LONG LAKE MN 55356-9485 US	
Weight	25.0 lbs, 11.4 kgs		
Delivered	Dec 05, 2002 13:05	Transportation Charge	75.25
Svc Area	A1	Discount	-7.53
Signed by	[REDACTED]	Fuel Surcharge	2.71
FedEx Use	341178410/01552/SN	Courier Pickup Charge	0.00
Total Transportation Charges			USD \$ 70.43
Shipment Detail Subtotal			USD \$ 70.43

EFTA00040191



Invoice Number: 4-495-33932

Invoice Date: Dec 16, 2002

Account Number:

[REDACTED]

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FedEx Ground Summary

Date	Packages	Weight	Base Charges	Other Charges	Total Charges
Prepaid Ground					
12/05	1	3.0	5.15	0.06	5.21
Package Total	1	3.0	5.15	0.06	5.21
Weekly Service Charge 12/06/2002				11.00	11.00
Total Charges	1	3.0	5.15	11.06	16.21





Invoice Number: 4-495-33932

Invoice Date: Dec 16, 2002

Account Number:

[REDACTED]

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FedEx Ground Prepaid Detail

Purchase Order Number	Customer Reference	Tracking ID	Svc Code	Dest Zip	Zone	Weight	Base Charge	Other Charge	Total Charge
Pickup Date: 12/05		068 275710000358	019	94538	008	3.0	5.15	0.06(35)	5.21



Invoice Number: 4-495-33932

Invoice Date: Dec 16, 2002

Account Number: [REDACTED]

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FedEx Ground Reference Chart

SERVICE CODES	FEDEX HOME DELIVERY SERVICE CODES	ZONE DEFINITIONS
FedEx Ground		
015 AutoPOD, Prepaid, Domestic	800 AutoPOD, Prepaid	2-8 Ground Service 48 contiguous states
016 COD, Prepaid, Domestic	804 Prepaid	9 Service to Hawaii
017 ECOD, Prepaid, Domestic	808 Signature, Prepaid	10 Service to Puerto Rico
018 FedEx Ground, PRP, Prepaid, Domestic	810 Evening, AutoPOD, Prepaid	14 Service to Oahu
019 Prepaid, Domestic	814 Evening, Prepaid	17 Service to Alaska
020 AutoPOD, Collect, Domestic	818 Evening, Signature, Prepaid	22 Service within Alaska
021 Collect, Domestic	820 Date Certain, AutoPOD, Prepaid	23 Service from Alaska
030 COD, Collect, Domestic	824 Date Certain, Prepaid	25 Service from Alaska
031 ECOD, Collect, Domestic	828 Date Certain, Signature, Prepaid	51 & 54 Service to Canada
032 Cash COD, Collect, Domestic	830 Appointment, AutoPOD, Prepaid	92 & 96 Service from Hawaii (Deferred)
033 Guaranteed Funds COD, Collect, Domestic	834 Appointment, Prepaid	
136 Ground, Prepaid, Return Manager	835 Adult AutoPOD, Prepaid	
408 Guaranteed Funds COD, Prepaid, Domestic	836 Adult Signature, Prepaid	
409 Cash COD, Prepaid, Domestic	837 Evening, AdultPOD, Prepaid	
410 AutoPOD, COD, Prepaid, Domestic	838 Evening, Adult Signature, Prepaid	
411 AutoPOD, COD, Collect, Domestic	839 Date Certain, Adult AutoPOD, Prepaid	
412 AutoPOD, ECOD, Prepaid, Domestic	840 Date Certain, Adult Signature, Prepaid	
413 AutoPOD, ECOD, Collect, Domestic	841 Appointment, Adult Signature, Prepaid	
414 AutoPOD, PRP, Prepaid, Domestic	842 Appointment, AdultPOD, Prepaid	
415 AutoPOD, Guaranteed Funds COD, Ppd, Dom.	850 Bill 3rd Party	
416 AutoPOD, Cash COD, Prepaid, Domestic	851 Bill 3rd Party, Auto POD	
417 Bill 3rd Party, Domestic	852 Bill 3rd Party, Signature	
418 Bill 3rd Party, AutoPOD, Domestic	853 Evening, Bill 3rd Party	
419 Bill 3rd Party, COD, Domestic	854 Evening, Bill 3rd Party, AutoPOD	
420 Bill 3rd Party, Guaranteed Funds COD, Dom.	855 Evening, Bill 3rd Party, Signature	
421 Bill 3rd Party, Cash COD, Domestic	856 Date Certain, Bill 3rd Party	
422 Bill Recipient, Domestic	857 Date Certain, Bill 3rd Party, AutoPOD	
423 Bill Recipient, AutoPOD, Domestic	858 Date Certain, Bill 3rd Party, Signature	
424 Bill Recipient, COD, Domestic	859 Appointment, Bill 3rd Party	
425 Bill Recipient, Guaranteed Funds COD, Dom.	860 Appointment, Bill 3rd Party, AutoPOD	
426 Bill Recipient, Cash COD, Dom.	861 Bill 3rd Party, Adult AutoPOD	
427 AutoPOD, Cash COD, Collect, Domestic	862 Bill 3rd Party, Adult Signature	
428 AutoPOD, Guaranteed Funds COD, Collect, Dom.	863 Evening, Bill 3rd Party, Adult AutoPOD	
429 ECOD, Bill 3rd Party, Domestic	864 Evening, Bill 3rd Party, Adult Signature	
430 AutoPOD, COD, Bill 3rd Party, Domestic	865 Date Certain, Bill 3rd Party, Adult AutoPOD	
431 AutoPOD, ECOD, Bill 3rd Party, Domestic	866 Date Certain, Bill 3rd Party, Adult Signature	
432 AutoPOD, Cash COD, Bill 3rd Party, Domestic	869 Bill Recipient	
433 AutoPOD, Guaranteed Funds COD, Bill 3rd Party, Dom.	870 Bill Recipient, AutoPOD	
434 ECOD, Bill Recipient, Domestic	871 Bill Recipient, Signature	
435 AutoPOD, COD, Bill Recipient, Domestic	872 Evening, Bill Recipient	
436 AutoPOD, ECOD, Bill Recipient, Domestic	873 Evening, Bill Recipient, AutoPOD	
437 AutoPOD, Cash COD, Bill Recipient, Domestic	874 Evening, Bill Recipient, Signature	
438 AutoPOD, Guaranteed Funds COD, Bill Recipient, Dom.	875 Date Certain, Bill Recipient	
	876 Date Certain, Bill Recipient, AutoPOD	
	877 Date Certain, Bill Recipient, Signature	
	878 Appointment, Bill Recipient	
	879 Appointment, Bill Recipient, AutoPOD	
	880 Bill Recipient, Adult AutoPOD	
	881 Bill Recipient, Adult Signature	
	882 Evening, Bill Recipient, Adult AutoPOD	
	883 Evening, Bill Recipient, Adult Signature	
	884 Date Certain, Bill Recipient, Adult AutoPOD	
	885 Date Certain, Bill Recipient, Adult Signature	
	886 Appointment, Bill Recipient, Adult Signature	
	887 Appointment, Bill Recipient, Adult AutoPOD	
FedEx International Ground		
022 AutoPOD, Prepaid		
023 COD, Prepaid		
024 ECOD, Prepaid		
025 PRP, Prepaid		
026 Prepaid		
027 AutoPOD, Collect		
028 Collect		
478 Guaranteed Funds COD, Prepaid		
479 Cash COD, Prepaid		
480 AutoPOD, COD, Prepaid		
481 AutoPOD, Collect		
482 AutoPOD, ECOD, Prepaid		
483 AutoPOD, ECOD, Collect		
484 AutoPOD, PRP, Prepaid		
485 AutoPOD, Guaranteed Funds COD, Prepaid		
486 AutoPOD, Cash COD, Prepaid		
487 Bill 3rd Party		
488 Bill 3rd Party, AutoPOD		
489 Bill 3rd Party, COD		
490 Bill 3rd Party, Guaranteed Funds COD		
491 Bill 3rd Party, Cash COD		
492 Bill Recipient		
493 Bill Recipient, AutoPOD		
494 Bill Recipient, COD		
495 Bill Recipient, Guaranteed Funds COD		
496 Bill Recipient, Cash COD		

OTHER CHARGE CODE DEFINITIONS
(1) C.O.D. (Collect on Delivery)
(2) A.O.D. (Acknowledgement of Delivery)
(3) Call Tag
(4) Oversize > 84" Combined Length and Girth
(5) Declared Value
(6) Address Correction
(7) Hazardous Material
(8) Automatic Proof of Delivery
(9) Additional Handling
(10) Oversize Extra Service Fee
(11) Overweight > 150 lbs.
(12) Electronic C.O.D., 24 hours
(13) Electronic C.O.D., 48 hours
(14) FedEx Ground Residential
(15) FedEx Ground Residential - Rural
(16) Return Manager: Transmission Fee
(20) FedEx Signature Home Delivery
(21) FedEx Date Certain Home Delivery
(22) FedEx Appointment Home Delivery
(23) FedEx Evening Home Delivery
(24) FedEx Home Delivery Residential
(25) FedEx Home Delivery Residential - Rural
(26) Cash C.O.D. Charge
(27) Cash C.O.D. High Density Charge
(28) Cash C.O.D. Extra Difference Charge
(29) Proof of Delivery Advantage Charge
(30) FedEx Home Delivery Forced Appointment
(31) FedEx Home Delivery Surcharge - Out of Service Area
(32) FedEx Home Delivery Surcharge - Hazardous Material
(33) FedEx Home Delivery Surcharge - Over 70 Pounds
(34) FedEx Home Delivery Surcharge - COD Package
(35) Fuel Surcharge
(36) Oversize > 108" Combined Length and Girth
(37) Oversize > 108" in Length
(38) Oversize > 130" Combined Length and Girth
(39) Supplemental Oversize Package Charge
(40) Canada Goods & Services Tax - GST
(41) Canada Harmonized and Service Tax - HST
(42) Canada Quebec Sales Tax - QST
(43) Reserved
(44) Return Manager
(45) Credit Card Decline Surcharge
(46) Consolidated Returns Polybag
(47) Consolidated Returns Package 2x2x4 - 2x6x8
(48) Consolidated Returns Package 4x4x6 - 4x8x12
(49) Consolidated Returns Package 6x6x10 - 6x10x16
(50) Consolidated Returns Package 8x10x12 - 10x12x16
(51) Consolidated Returns Package Fill Charge
(52) Consolidated Returns Oversize Package Charge
(53) Ship Manager/Return Manager
(54) Security Surcharge



Invoice Number: 4-495-75031

Invoice Date: Dec 23, 2002

Account Number: [REDACTED]

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FedEx Tax ID: 71-0427007

JEFFREY E EPSTEIN
457 MADISON AVE
NEW YORK NY 10022-6843

Billing Account Shipping Address:
JEFFREY E EPSTEIN
457 MADISON AVE
NEW YORK NY 10022-6843 US

Invoice Questions?

Contact FedEx Revenue Services

Phone: (800) 622-1147 M-F 7-6 (CST)

Fax: (800) 548-3020

Internet: www.fedex.com

Invoice Summary Dec 23, 2002

FedEx Express Services

Transportation Charges	683.05
Base Discount	-73.84
Special Handling Charges	126.78

Total Charges.....USD\$. 735.99

FedEx Ground Services

Base Charges	20.15
Other Charges	16.25

Total Charges.....USD\$. 36.40

TOTAL THIS INVOICE.....USD \$ 772.39

You saved \$73.84 in discounts this period!

The FedEx Ground accounts referenced in this invoice have been transferred and assigned to, are owned by, and are payable to FedEx Express.

To ensure proper credit, please return this portion with your payment to FedEx.
Please do not staple or fold. Please make your check payable to FedEx.

☐ For change of address, check here and complete form on reverse side.

Remittance Advice

Your payment is due by Jan 07, 2003

Invoice Number	Account Number	Amount Due
4-495-75031	[REDACTED]	USD \$ 772.39

114420814495750319300007723924

SP 01 000001 97702 A 1 ASNGLP

JEFFREY E EPSTEIN
457 MADISON AVE
NEW YORK NY 10022-6843



FedEx
P.O. Box 371461
Pittsburgh PA 15250-7461

EFTA00040195



Invoice Number: 4-495-75031

Invoice Date: Dec 23, 2002

Account Number: [REDACTED]

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Adjustment Request FAX TO (800) 548-3020

Tracking No./Airbill No.	Reason Code	Explanation

BEFORE YOU FAX

Please include detailed explanation for each adjustment request.

Remember to include recipient's account number or third party's account number if applicable.

From:

Name

Date

()

Business Phone

()

Business Fax

REASON CODE KEY

Reason Code	Description
DUP	Duplicate Billing
PND	Shipment Never Sent
RATE	Incorrect Rates or Pieces
RRA	Rebill Recipient - Include Recipient's Account No.
RSA	Rebill Sender
RTA	Rebill Third Party - Include Third Party's Account No.
SUR	Incorrect Surcharge - Please Explain
OTHR	Other - Please Explain

This form cannot be used to request invoice Adjustments due to Service Failures or lack of a POD.

To request adjustments for Service Failures or lack of a POD, please call 1-800-622-1147,
visit our internet site at www.fedex.com or register for FIO.

Federal Express

Please indicate change in address for the account # listed below:

☐

Physical Address

☐

Billing Address

☐

Mailing Address

Account Number: 1144-2081-6

Name:

Address:

Apt. / Suite:

City:

State:

Zip:

Phone: ()

Fax: ()

Authorizing Signature:



Invoice Number: 4-495-75031

Invoice Date: Dec 23, 2002

Account Number: [REDACTED]

Page: 3 of 21

FedEx Express Shipment Summary by Payment Type

Original			
Shipper			
Number of Shipments	31		
Transportation Charges	595.30		
Base Discount	-64.15		
Special Handling Charges	110.96		
TOTAL	USD \$	642.11	
Number of Shipments			31
Total Charges		USD \$	642.11
Recipient			
Number of Shipments	2		
Transportation Charges	33.25		
Base Discount	-4.24		
Special Handling Charges	12.51		
TOTAL	USD \$	41.52	
Number of Shipments			2
Total Charges		USD \$	41.52
Third Party			
Number of Shipments	1		
Transportation Charges	54.50		
Base Discount	-5.45		
Special Handling Charges	3.31		
TOTAL	USD \$	52.36	
Number of Shipments			1
Total Charges		USD \$	52.36
TOTAL SHIPMENTS			34
TOTAL CHARGES		USD \$	735.99



Invoice Number: 4-495-75031

Invoice Date: Dec 23, 2002

Account Number: [REDACTED]

Page: 4 of 21

FedEx Express Shipment Detail By Payment Type (Original)

Picked up: Dec 09, 2002

Payor: Shipper

Reference: NO REFERENCE INFORMATION

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.

Distance Based Pricing, Zone 4

Package sent from: 10021 zip code

Tracking ID 837133955336
Service Type FedEx Priority Overnight
Package Type FedEx Pak
Zone 4
Packages 1
Weight 1.0 lbs, 0.5 kgs
Delivered Dec 10, 2002 09:32
Svc Area A2
Signed by D.OAKLEY
FedEx Use 347191900/01530/_

Sender
[REDACTED]
JEFFREY E EPSTEIN
457 MADISON AVE
NEW YORK NY 10022-6843 US

Recipient
MARC LUNDBERG
NA PROPERTY INC
[REDACTED]

Transportation Charge	21.00
Discount	-2.10
Fuel Surcharge	0.76
Courier Pickup Charge	0.00
Total Transportation Charges	USD \$ 19.66

Picked up: Dec 09, 2002

Payor: Shipper

Reference: NO REFERENCE INFORMATION

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.

The delivery commitment for FedEx 2day to homes or private residences (including home offices) is 7 P.M. the second business day for A1, A2, AA, A3, AM, PM, 01 and RM service areas.

Distance Based Pricing, Zone 8

Package sent from: 10021 zip code

Release signature on file.

Tracking ID 837133955369
Service Type FedEx 2Day
Package Type Customer Packaging
Zone 8
Packages 1
Weight 5.0 lbs, 2.3 kgs
Delivered Dec 11, 2002 13:24
Svc Area 2R
Signed by M.AXWELL
FedEx Use 347191900/06112/02

Sender
G MAXWELL
JEFFREY E EPSTEIN
457 MADISON AVE
NEW YORK NY 10022-6843 US

Recipient
LAURA CASEY WASSERMAN
[REDACTED]

Transportation Charge	16.75
Discount	-1.68
Fuel Surcharge	0.60
Courier Pickup Charge	0.00
Residential Delivery	1.35
Total Transportation Charges	USD \$ 17.02

Picked up: Dec 09, 2002

Payor: Shipper

Reference: NO REFERENCE INFORMATION

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.

Distance Based Pricing, Zone 8

Package sent from: 91201 zip code

Tracking ID 837657306295
Service Type FedEx Standard Overnight
Package Type Customer Packaging
Zone 8
Packages 1
Weight 10.0 lbs, 4.5 kgs
Delivered Dec 10, 2002 11:54
Svc Area A1
Signed by S.MAXWELL
FedEx Use 343063970/01415/_

Sender
BRAN FERREN
JEFFREY E EPSTEIN
457 MADISON AVE
NEW YORK NY 10022-6843 US

Recipient
EDWINA SIMMONDS
[REDACTED]

Transportation Charge	45.75
Discount	-4.58
Fuel Surcharge	1.65
Residential Delivery	1.35
Total Transportation Charges	USD \$ 44.17



Invoice Number: 4-495-75031

Invoice Date: Dec 23, 2002

Account Number: [REDACTED]

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FedEx Express Shipment Detail By Payment Type (Original)

Picked up: Dec 10, 2002

Payor: Shipper

Reference: NO REFERENCE INFORMATION

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.

Distance Based Pricing, Zone 8

Package sent from: 10021 zip code

1st attempt Dec 12, 2002 at 12:50 PM.

Incorrect recipient address.

Original address - [REDACTED]

FedEx has audited this shipment for correct packages, weight, and service. Any changes made are reflected in the invoice amount.

Tracking ID	837133955370	Sender	Recipient
Service Type	FedEx 2Day	G MAXWELL	DANNY HILLIS
Package Type	Customer Packaging	JEFFREY E EPSTEIN	[REDACTED]
Zone	8	457 MADISON AVE	
Packages	1	NEW YORK NY 10022-6843 US	
Weight	5.0 lbs, 2.3 kgs		
Delivered	Dec 16, 2002 09:14	Transportation Charge	16.75
Svc Area	A2	Discount	-1.68
Signed by	M.CHRISTMAN	Address Correction	10.00
FedEx Use	346204710/06112/03	Fuel Surcharge	0.60
		Courier Pickup Charge	0.00
Total Transportation Charges			USD \$ 25.67

Picked up: Dec 11, 2002

Payor: Shipper

Reference: NO REFERENCE INFORMATION

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.

Distance Based Pricing, Zone 2

The delivery commitment for Express Saver Packages to homes or private residences (Including home offices) is 7PM the third business day for all regions.

1st attempt Dec 13, 2002 at 04:27 PM.

Recipient not in business closed.

Tracking ID	828694900915	Sender	Recipient
Service Type	FedEx Express Saver	J EPSTEIN	KIRSTIE FERGUSEN
Package Type	Customer Packaging	JEFFREY E EPSTEIN	[REDACTED]
Zone	2	457 MADISON AVE	
Packages	1	NEW YORK NY 10022-6843 US	
Weight	2.0 lbs, 0.9 kgs		
Delivered	Dec 16, 2002 12:52	Transportation Charge	7.80
Svc Area	3R	Discount	-0.78
Signed by	K.FERGUNSEN	Fuel Surcharge	0.28
FedEx Use	347150410/07167/08	Residential Delivery	1.35
Total Transportation Charges			USD \$ 8.65

**Invoice Number: 4-495-75031**

Invoice Date: Dec 23, 2002

Account Number: [REDACTED]

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FedEx Express Shipment Detail By Payment Type (Original)**Picked up: Dec 11, 2002****Payor: Shipper****Reference: NO REFERENCE INFORMATION**

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.

Distance Based Pricing, Zone 8

The delivery commitment for Express Saver Packages to homes or private residences (Including home offices) is 7PM the third business day for all regions.

Release signature on file.

Tracking ID	826694900970	Sender	Recipient
Service Type	FedEx Express Saver	J EPSTEIN	[REDACTED]
Package Type	Customer Packaging	JEFFREY E EPSTEIN	[REDACTED]
Zone	8	457 MADISON AVE	[REDACTED]
Packages	1	NEW YORK NY 10022-6843 US	
Weight	2.0 lbs, 0.9 kgs		
Delivered	Dec 13, 2002 13:25	Transportation Charge	10.55
Svc Area	3R	Discount	-1.06
Signed by	17355007	Fuel Surcharge	0.38
FedEx Use	347150410/07179/02	Residential Delivery	1.35
Total Transportation Charges			USD \$ 11.22

Picked up: Dec 11, 2002**Payor: Shipper****Reference: NO REFERENCE INFORMATION**

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.

Distance Based Pricing, Zone 8

The delivery commitment for Express Saver Packages to homes or private residences (Including home offices) is 7PM the third business day for all regions.

1st attempt Dec 13, 2002 at 12:01 PM.

Incorrect recipient address.

Original address - [REDACTED]

FedEx has audited this shipment for correct packages, weight, and service. Any changes made are reflected in the invoice amount.

Tracking ID	826694900981	Sender	Recipient
Service Type	FedEx Express Saver	J EPSTEIN	[REDACTED]
Package Type	FedEx Pak	JEFFREY E EPSTEIN	[REDACTED]
Zone	8	457 MADISON AVE	[REDACTED]
Packages	1	NEW YORK NY 10022-6843 US	
Weight	2.0 lbs, 0.9 kgs		
Delivered	Dec 17, 2002 12:58	Transportation Charge	10.55
Svc Area	3R	Discount	-1.06
Signed by	[REDACTED]	Address Correction	10.00
FedEx Use	347141680/07179/03	Fuel Surcharge	0.38
		Residential Delivery	1.35
Total Transportation Charges			USD \$ 21.22



Invoice Number: 4-495-75031

Invoice Date: Dec 23, 2002

Account Number: [REDACTED]

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FedEx Express Shipment Detail By Payment Type (Original)

Picked up: Dec 11, 2002

Payor: Shipper

Reference: NO REFERENCE INFORMATION

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.

Distance Based Pricing, Zone 8

The delivery commitment for Express Saver Packages to homes or private residences (Including home offices) is 7PM the third business day for all regions.

1st attempt Dec 13, 2002 at 11:47 AM.

Incorrect recipient address.

Tracking ID 828694901006
Service Type FedEx Express Saver
Package Type Customer Packaging
Zone 8
Packages 1
Weight 2.0 lbs, 0.9 kgs
Delivered Dec 17, 2002 13:10
Svc Area 3R
Signed by [REDACTED]
FedEx Use 347150410/07179/03

Sender
J EPSTEIN
JEFFREY E EPSTEIN
457 MADISON AVE
NEW YORK NY 10022-6843 US

Recipient

Transportation Charge	10.55
Discount	-1.06
Address Correction	10.00
Fuel Surcharge	0.38
Residential Delivery	1.35

Total Transportation Charges	USD \$	21.22
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Picked up: Dec 11, 2002

Payor: Shipper

Reference: NO REFERENCE INFORMATION

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.

Distance Based Pricing, Zone 4

Package sent from: 43230 zip code

Tracking ID 837657306527
Service Type FedEx Standard Overnight
Package Type FedEx Envelope
Zone 4
Packages 1
Weight 1.0 lbs, 0.5 kgs
Delivered Dec 12, 2002 12:10
Svc Area A1
Signed by JMAXWELL
FedEx Use 347201400/00222/_

Sender
[REDACTED]
JEFFREY E EPSTEIN
457 MADISON AVE
NEW YORK NY 10022-6843 US

Recipient

EDWINA SIMMONDS

Transportation Charge	13.50
Discount	-2.16
Fuel Surcharge	0.45
Residential Delivery	1.35

Total Transportation Charges	USD \$	13.14
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Picked up: Dec 12, 2002

Payor: Shipper

Reference: NO REFERENCE INFORMATION

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.

Distance Based Pricing, Zone 2

Tracking ID 828694899859
Service Type FedEx Express Saver
Package Type FedEx Pak
Zone 2
Packages 1
Weight 1.0 lbs, 0.5 kgs
Delivered Dec 13, 2002 09:44
Svc Area A2
Signed by [REDACTED]
FedEx Use 348171900/07167/_

Sender
J EPSTEIN
JEFFREY E EPSTEIN
457 MADISON AVE
NEW YORK NY 10022-6843 US

Recipient

MERCEDES BENZ USA

Transportation Charge	7.70
Discount	-0.77
Fuel Surcharge	0.28

Total Transportation Charges	USD \$	7.21
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EFTA00040201



Invoice Number: 4-495-75031

Invoice Date: Dec 23, 2002

Account Number: [REDACTED]

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FedEx Express Shipment Detail By Payment Type (Original)

Picked up: Dec 12, 2002

Payor: Shipper

Reference: NO REFERENCE INFORMATION

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.

Distance Based Pricing, Zone 8

The delivery commitment for Express Saver Packages to homes or private residences (Including home offices) is 7PM the third business day for all regions.

Release signature on file.

Tracking ID 82669489860
Service Type FedEx Express Saver
Package Type Customer Packaging
Zone 8
Packages 1
Weight 1.0 lbs, 0.5 kgs
Delivered Dec 17, 2002 13:11
Svc Area 3R
Signed by [REDACTED]
FedEx Use 348171900/07179/02

Sender
J EPSTEIN
JEFFREY E EPSTEIN
457 MADISON AVE
NEW YORK NY 10022-6843 US

Recipient

Transportation Charge	9.05
Discount	-0.91
Fuel Surcharge	0.33
Residential Delivery	1.35
Total Transportation Charges	USD \$ 9.82

Picked up: Dec 12, 2002

Payor: Shipper

Reference: NO REFERENCE INFORMATION

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.

Distance Based Pricing, Zone 6

The delivery commitment for Express Saver Packages to homes or private residences (Including home offices) is 7PM the third business day for all regions.

Release signature on file.

Tracking ID 82669489870
Service Type FedEx Express Saver
Package Type Customer Packaging
Zone 6
Packages 1
Weight 4.0 lbs, 1.8 kgs
Delivered Dec 16, 2002 14:37
Svc Area 3R
Signed by [REDACTED]
FedEx Use 348172820/07175/02

Sender
J EPSTEIN
JEFFREY E EPSTEIN
457 MADISON AVE
NEW YORK NY 10022-6843 US

Recipient

CARDINE ANDIANI

Transportation Charge	12.20
Fuel Surcharge	0.44
Residential Delivery	1.35
Discount	-1.22
Total Transportation Charges	USD \$ 12.77

Picked up: Dec 12, 2002

Payor: Shipper

Reference: NO REFERENCE INFORMATION

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.

Distance Based Pricing, Zone 6

The delivery commitment for Express Saver Packages to homes or private residences (Including home offices) is 7PM the third business day for all regions.

FedEx has audited this shipment for correct packages, weight, and service. Any changes made are reflected in the invoice amount.

Tracking ID 82669489881
Service Type FedEx Express Saver
Package Type FedEx Pak
Zone 6
Packages 1
Weight 3.0 lbs, 1.4 kgs
Delivered Dec 16, 2002 15:06
Svc Area 3R
Signed by [REDACTED]
FedEx Use 348171900/07175/_

Sender
J EPSTEIN
JEFFREY E EPSTEIN
457 MADISON AVE
NEW YORK NY 10022-6843 US

Recipient

Transportation Charge	11.00
Discount	-1.10
Fuel Surcharge	0.40
Residential Delivery	1.35
Total Transportation Charges	USD \$ 11.65

EFTA00040202



Invoice Number: 4-495-75031

Invoice Date: Dec 23, 2002

Account Number: [REDACTED]

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FedEx Express Shipment Detail By Payment Type (Original)

Dropped off: Dec 12, 2002

Payor: Shipper

Reference: NO REFERENCE INFORMATION

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.

Distance Based Pricing, Zone 4

The delivery commitment for Express Saver Packages to homes or private residences (Including home offices) is 7PM the third business day for all regions.

FedEx has audited this shipment for correct packages, weight, and service. Any changes made are reflected in the invoice amount.

Release signature on file.

Tracking ID 828694900948
Service Type FedEx Express Saver
Package Type Customer Packaging
Zone 4
Packages 1
Weight 2.0 lbs, 0.9 kgs
Delivered Dec 16, 2002 13:52
Svc Area 3R
Signed by L.NNA266287
FedEx Use 348188670/07171/02

Sender
J EPSTEIN
JEFFREY E EPSTEIN
457 MADISON AVE
NEW YORK NY 10022-6843 US

Recipient

Transportation Charge	8.10
Discount	-0.81
Fuel Surcharge	0.29
Residential Delivery	1.35

Total Transportation Charges	USD \$	8.93
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Picked up: Dec 12, 2002

Payor: Shipper

Reference: NO REFERENCE INFORMATION

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.

Distance Based Pricing, Zone 6

Tracking ID 837169385013
Service Type FedEx Priority Overnight
Package Type FedEx Envelope
Zone 6
Packages 1
Weight 1.0 lbs, 0.5 kgs
Delivered Dec 13, 2002 10:46
Svc Area AA
Signed by H.BAK
FedEx Use 348171900/00230/_

Sender
JEFFREY E EPSTEIN
457 MADISON AVE
NEW YORK NY 10022-6843 US

Recipient
HUGH BATE
CHANOTS OF PALM BEACH

Transportation Charge	16.00
Discount	-2.56
Fuel Surcharge	0.54

Total Transportation Charges	USD \$	13.98
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Picked up: Dec 13, 2002

Payor: Shipper

Reference: NO REFERENCE INFORMATION

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.

Distance Based Pricing, Zone 8

Release signature on file.

InternetShip
Tracking ID 790161678197
Service Type FedEx Standard Overnight
Package Type FedEx Pak
Zone 8
Packages 1
Weight 2.0 lbs, 0.9 kgs
Delivered Dec 16, 2002 14:02
Svc Area A1
Signed by 15318572
FedEx Use 523497064/01415/02

Sender
JEFFREY E EPSTEIN
457 MADISON AVE
NEW YORK NY 10022-6843 US

Recipient
ISABEL MAXWELL

Transportation Charge	25.50
Discount	-2.55
Fuel Surcharge	0.92
Residential Delivery	1.35

Total Transportation Charges	USD \$	25.22
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**Invoice Number: 4-495-75031**

Invoice Date: Dec 23, 2002

Account Number: [REDACTED]

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FedEx Express Shipment Detail By Payment Type (Original)**Picked up: Dec 13, 2002****Payor: Shipper****Reference: NO REFERENCE INFORMATION**

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.

Distance Based Pricing, Zone 6

FedEx has audited this shipment for correct packages, weight, and service. Any changes made are reflected in the invoice amount.

We calculated your charges based on a dimensional weight of 22.0 lbs., 24" x 16" x 11", divided by 194.

Release signature on file.

InternetShip		<u>Sender</u>	<u>Recipient</u>
Tracking ID	790161716618	[REDACTED]	JEFFREY E. EPSTEIN
Service Type	FedEx Priority Overnight	JEFFREY E EPSTEIN	358 EL BRILLO WAY
Package Type	Customer Packaging	457 MADISON AVE	PALM BEACH FL 33480 US
Zone	6	NEW YORK NY 10022-6843 US	
Packages	1		
Weight	15.0 lbs, 6.8 kgs	Transportation Charge	74.25
Delivered	Dec 14, 2002 11:06	Discount	-7.43
Svc Area	AA	Saturday Delivery	10.00
Signed by	E PSTIEN1	Fuel Surcharge	2.67
FedEx Use	523497764/01574/02	Residential Delivery	1.35
Total Transportation Charges			USD \$ 80.84

Picked up: Dec 13, 2002**Payor: Shipper****Reference: NO REFERENCE INFORMATION**

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.

Distance Based Pricing, Zone 2

The delivery commitment for Express Saver Packages to homes or private residences (Including home offices) is 7PM the third business day for all regions.

1st attempt Dec 17, 2002 at 03:30 PM.

Incorrect recipient address.

Original address - [REDACTED]

FedEx has audited this shipment for correct packages, weight, and service. Any changes made are reflected in the invoice amount.

InternetShip		<u>Sender</u>	<u>Recipient</u>
Tracking ID	791254610500	[REDACTED]	[REDACTED]
Service Type	FedEx Express Saver	JEFFREY E EPSTEIN	
Package Type	Customer Packaging	457 MADISON AVE	
Zone	2	NEW YORK NY 10022-6843 US	
Packages	1		
Weight	2.0 lbs, 0.9 kgs	Transportation Charge	7.80
Delivered	Dec 18, 2002 14:36	Discount	-0.78
Svc Area	3R	Address Correction	10.00
Signed by	[REDACTED]	Fuel Surcharge	0.28
FedEx Use	523555907/07167/03	Residential Delivery	1.35
Total Transportation Charges			USD \$ 18.65



Invoice Number: 4-495-75031

Invoice Date: Dec 23, 2002

Account Number: [REDACTED]

Page: 11 of 21

FedEx Express Shipment Detail By Payment Type (Original)

Picked up: Dec 13, 2002

Payor: Shipper

Reference: NO REFERENCE INFORMATION

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.

Distance Based Pricing, Zone 6

Release signature on file.

InternetShip

Tracking ID 791995168935

Service Type FedEx Standard Overnight

Package Type Customer Packaging

Zone 6

Packages 1

Weight 10.0 lbs, 4.5 kgs

Delivered Dec 16, 2002 14:56

Svc Area AA

Signed by E PSTEIN

FedEx Use 523568020/01371/02

Sender

[REDACTED]

JEFFREY E EPSTEIN

457 MADISON AVE

NEW YORK NY 10022-6843 US

Recipient

JEFFREY E. EPSTEIN

358 EL BRILLO WAY

PALM BEACH FL 33480 US

Transportation Charge

43.50

Discount

-4.35

Fuel Surcharge

1.57

Residential Delivery

1.35

Total Transportation Charges

USD \$

42.07

Dropped off: Dec 13, 2002

Payor: Shipper

Reference: NO REFERENCE INFORMATION

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.

Distance Based Pricing, Zone 7

Package sent from: 87056 zip code

Release signature on file.

Tracking ID 827487051377

Service Type FedEx Priority Overnight

Package Type FedEx Pak

Zone 7

Packages 1

Weight 1.0 lbs, 0.5 kgs

Delivered Dec 14, 2002 11:06

Svc Area AA

Signed by E PSTIEN1

FedEx Use 351043160/01596/02

Sender

[REDACTED]

JEFFREY E EPSTEIN

457 MADISON AVE

NEW YORK NY 10022-6843 US

Recipient

[REDACTED] C/O JEFFREY EPSTON

ILLEGIBLE

PALM BEACH FL 33480 US

Transportation Charge

25.25

Discount

-2.53

Saturday Delivery

10.00

Fuel Surcharge

0.91

Residential Delivery

1.35

Total Transportation Charges

USD \$

34.98

**Invoice Number: 4-495-75031**

Invoice Date: Dec 23, 2002

Account Number: [REDACTED]

Page: 12 of 21

FedEx Express Shipment Detail By Payment Type (Original)**Dropped off: Dec 16, 2002****Payor: Shipper****Reference: NO REFERENCE INFORMATION**

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.

Distance Based Pricing, Zone 6

FedEx has audited this shipment for correct packages, weight, and service. Any changes made are reflected in the invoice amount.

We calculated your charges based on a dimensional weight of 24.0 lbs., 24" x 16" x 12", divided by 194.

Release signature on file.

InternetShip	Sender	Recipient
Tracking ID 790655282289	[REDACTED]	JEFFREY E. EPSTEIN
Service Type FedEx Priority Overnight	JEFFREY E EPSTEIN	358 EL BRILLO WAY
Package Type Customer Packaging	457 MADISON AVE	PALM BEACH FL 33480 US
Zone 6	NEW YORK NY 10022-6843 US	
Packages 1		
Weight 15.0 lbs, 6.8 kgs	Transportation Charge	77.75
Delivered Dec 17, 2002 09:40	Discount	-7.78
Svc Area AA	Fuel Surcharge	2.80
Signed by E.ISPTEIN	Residential Delivery	1.35
FedEx Use 523702206/01574/02		
Total Transportation Charges		USD \$ 74.12

Picked up: Dec 16, 2002**Payor: Shipper****Reference: NO REFERENCE INFORMATION**

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.

Distance Based Pricing, Zone 4

InternetShip	Sender	Recipient
Tracking ID 791996415167	[REDACTED]	[REDACTED]
Service Type FedEx Express Saver	JEFFREY E EPSTEIN	
Package Type Customer Packaging	457 MADISON AVE	
Zone 4	NEW YORK NY 10022-6843 US	
Packages 1		
Weight 5.0 lbs, 2.3 kgs	Transportation Charge	10.40
Delivered Dec 18, 2002 11:57	Discount	-1.04
Svc Area A2	Fuel Surcharge	0.37
Signed by K.DANIELS		
FedEx Use 523763807/07171/_		
Total Transportation Charges		USD \$ 9.73



Invoice Number: 4-495-75031

Invoice Date: Dec 23, 2002

Account Number: [REDACTED]

Page: 13 of 21

FedEx Express Shipment Detail By Payment Type (Original)

Dropped off: Dec 16, 2002

Payor: Shipper

Reference: NO REFERENCE INFORMATION

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.
Distance Based Pricing, Zone 8
Package sent from: 90046 zip code
Release signature on file.

Tracking ID 836663867977
Service Type FedEx Standard Overnight
Package Type FedEx Envelope
Zone 8
Packages 1
Weight 1.0 lbs, 0.5 kgs
Delivered Dec 17, 2002 12:09
Svc Area A1
Signed by [REDACTED]
FedEx Use 351006710/00266/02

Sender
[REDACTED]
JEFFREY E EPSTEIN
457 MADISON AVE
NEW YORK NY 10022-6843 US

Recipient
EDWINA SIMMONDS
[REDACTED]

Transportation Charge	15.25
Discount	-2.44
Fuel Surcharge	0.51
Residential Delivery	1.35
Total Transportation Charges	USD \$ 14.67

Dropped off: Dec 16, 2002

Payor: Shipper

Reference: NO REFERENCE INFORMATION

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.
Distance Based Pricing, Zone 6
Package sent from: 33461 zip code

Tracking ID 837169384484
Service Type FedEx Express Saver
Package Type FedEx Envelope
Zone 6
Packages 1
Weight 1.0 lbs, 0.5 kgs
Delivered Dec 17, 2002 09:57
Svc Area A1
Signed by S.GRIFFS
FedEx Use 351083650/00833/_

Sender
[REDACTED]
JEFFREY E EPSTEIN
457 MADISON AVE
NEW YORK NY 10022-6843 US

Recipient
MS [REDACTED]
ILLEGIBLE
[REDACTED]

Transportation Charge	8.35
Discount	-0.84
Fuel Surcharge	0.30
Total Transportation Charges	USD \$ 7.81

Picked up: Dec 17, 2002

Payor: Shipper

Reference: NO REFERENCE INFORMATION

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.
Distance Based Pricing, Zone 4

InternetShip
Tracking ID 792152656709
Service Type FedEx Priority Overnight
Package Type FedEx Envelope
Zone 4
Packages 1
Weight 1.0 lbs, 0.5 kgs
Delivered Dec 18, 2002 09:56
Svc Area A2
Signed by D.OAKLEY
FedEx Use 523981508/00208/_

Sender
[REDACTED]
JEFFREY E EPSTEIN
457 MADISON AVE
NEW YORK NY 10022-6843 US

Recipient
PEG UGLAND
N. A. PROPERTY
[REDACTED]

Transportation Charge	15.25
Discount	-2.44
Fuel Surcharge	0.51
Total Transportation Charges	USD \$ 13.32

EFTA00040207

**Invoice Number: 4-495-75031**

Invoice Date: Dec 23, 2002

Account Number: [REDACTED]

Page: 14 of 21

FedEx Express Shipment Detail By Payment Type (Original)**Dropped off: Dec 17, 2002****Payor: Shipper****Reference: CMP GIB 151**

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.

Distance Based Pricing, Zone 4

Package sent from: 33461 zip code

1st attempt Dec 18, 2002 at 09:03 AM.

Recipient not in business closed.

FedEx has audited this shipment for correct packages, weight, and service. Any changes made are reflected in the invoice amount.

Tracking ID 828694900580
Service Type FedEx 2Day
Package Type FedEx Pak
Zone 4
Packages 1
Weight 1.0 lbs, 0.5 kgs
Delivered Dec 18, 2002 09:36
Svc Area AA
Signed by K.DAVIS
FedEx Use 352034240/06024/08

Sender
[REDACTED]
JEFFREY E EPSTEIN
457 MADISON AVE
NEW YORK NY 10022-6843 US

Recipient
GREG VINCENT
GULFSTREAM AEROSPACE
[REDACTED]

Transportation Charge	8.50
Discount	-0.85
Fuel Surcharge	0.31
Total Transportation Charges	USD \$ 7.96

Picked up: Dec 18, 2002**Payor: Shipper****Reference: NO REFERENCE INFORMATION**

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.

The delivery commitment for FedEx 2day to homes or private residences (including home offices) is 7 P.M. the second business day for A1, A2, AA, A3, AM, PM, 01 and RM service areas.

Distance Based Pricing, Zone 6

Release signature on file.

InternetShip
Tracking ID 792794360956
Service Type FedEx 2Day
Package Type Customer Packaging
Zone 6
Packages 1
Weight 2.0 lbs, 0.9 kgs
Delivered Dec 20, 2002 16:11
Svc Area 2R
Signed by [REDACTED]
FedEx Use 523209408/06068/02

Sender
[REDACTED]
JEFFREY E EPSTEIN
457 MADISON AVE
NEW YORK NY 10022-6843 US

Transportation Charge	10.50
Discount	-1.05
Fuel Surcharge	0.38
Residential Delivery	1.35
Total Transportation Charges	USD \$ 11.18

**Invoice Number: 4-495-75031**

Invoice Date: Dec 23, 2002

Account Number: [REDACTED]

Page: 15 of 21

FedEx Express Shipment Detail By Payment Type (Original)**Picked up: Dec 18, 2002****Payor: Shipper****Reference: NO REFERENCE INFORMATION**

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.

The delivery commitment for FedEx 2day to homes or private residences (including home offices) is 7 P.M. the second business day for A1, A2, AA, A3, AM, PM, 01 and RM service areas.

Distance Based Pricing, Zone 6

Release signature on file.

InternetShip

Tracking ID 792794370512

Service Type FedEx 2Day

Package Type Customer Packaging

Zone 6

Packages 1

Weight 2.0 lbs, 0.9 kgs

Delivered Dec 20, 2002 17:02

Svc Area 2R

Signed by 14794574

FedEx Use 523209738/06068/02

Sender[REDACTED]
JEFFREY E EPSTEIN
457 MADISON AVE
NEW YORK NY 10022-6843 USRecipient

[REDACTED]

Transportation Charge	10.50
Discount	-1.05
Fuel Surcharge	0.38
Residential Delivery	1.35
Total Transportation Charges	USD \$ 11.18

Picked up: Dec 18, 2002**Payor: Shipper****Reference: NO REFERENCE INFORMATION**

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.

The delivery commitment for FedEx 2day to homes or private residences (including home offices) is 7 P.M. the second business day for A1, A2, AA, A3, AM, PM, 01 and RM service areas.

Distance Based Pricing, Zone 6

Release signature on file.

InternetShip

Tracking ID 792794379461

Service Type FedEx 2Day

Package Type Customer Packaging

Zone 6

Packages 1

Weight 2.0 lbs, 0.9 kgs

Delivered Dec 20, 2002 16:36

Svc Area 2R

Signed by 2579934

FedEx Use 523209958/06068/02

Sender[REDACTED]
JEFFREY E EPSTEIN
457 MADISON AVE
NEW YORK NY 10022-6843 USRecipient

[REDACTED]

Transportation Charge	10.50
Discount	-1.05
Fuel Surcharge	0.38
Residential Delivery	1.35
Total Transportation Charges	USD \$ 11.18

EFTA00040209



Invoice Number: 4-495-75031

Invoice Date: Dec 23, 2002

Account Number: [REDACTED]

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FedEx Express Shipment Detail By Payment Type (Original)

Picked up: Dec 18, 2002

Payor: Shipper

Reference: NO REFERENCE INFORMATION

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.
Distance Based Pricing, Zone 3
Weather delay - Thunderstorm.
Release signature on file.

InternetShip

Tracking ID 792794801284
Service Type FedEx Priority Overnight
Package Type FedEx Box
Zone 3
Packages 1
Weight 2.0 lbs, 0.9 kgs
Delivered Dec 19, 2002 11:10
Svc Area A1
Signed by 805899
FedEx Use 523220718/01508/02

Sender

[REDACTED]
JEFFREY E EPSTEIN
457 MADISON AVE
NEW YORK NY 10022-6843 US

Recipient

ELLA DERSHOWITZ

Transportation Charge	18.75
Discount	-1.88
Fuel Surcharge	0.67
Residential Delivery	1.35
Total Transportation Charges	USD \$ 18.89

Picked up: Dec 19, 2002

Payor: Shipper

Reference: NO REFERENCE INFORMATION

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.
Distance Based Pricing, Zone 6
Weather delay - Thunderstorm.

InternetShip

Tracking ID 792795331100
Service Type FedEx Priority Overnight
Package Type FedEx Envelope
Zone 6
Packages 1
Weight 1.0 lbs, 0.5 kgs
Delivered Dec 20, 2002 13:36
Svc Area AA
Signed by [REDACTED]
FedEx Use 523413915/00230/TS

Sender

[REDACTED]
JEFFREY E EPSTEIN
457 MADISON AVE
NEW YORK NY 10022-6843 US

Recipient

[REDACTED]
COLONIAL BANK
[REDACTED]

Transportation Charge	16.00
Discount	-2.56
Fuel Surcharge	0.54
Total Transportation Charges	USD \$ 13.98

Shipment Detail Subtotal USD \$ 642.11



Invoice Number: 4-495-75031

Invoice Date: Dec 23, 2002

Account Number: [REDACTED]

Page: 17 of 21

FedEx Express Shipment Detail By Payment Type (Original)

Picked up: Dec 13, 2002

Payor: Recipient

Reference: NO REFERENCE INFORMATION

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.
Distance Based Pricing, Zone 2
Release signature on file.

Tracking ID 828527257720
Service Type FedEx Priority Overnight
Package Type Customer Packaging
Zone 2
Packages 1
Weight 3.0 lbs, 1.4 kgs
Delivered Dec 14, 2002 11:40
Svc Area AA
Signed by 14794574
FedEx Use 348047870/01486/02

Sender
FRANK NODARSE
CRYSTAL COMMUNICATIONS, INC.

Recipient

Transportation Charge	18.00
Discount	-1.80
Saturday Delivery	10.00
Fuel Surcharge	0.65
Courier Pickup Charge	0.00
Residential Delivery	1.35
Total Transportation Charges	USD \$ 28.20

Dropped off: Dec 18, 2002

Payor: Recipient

Reference: NO REFERENCE INFORMATION

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.
Distance Based Pricing, Zone 8

Tracking ID 837700541252
Service Type FedEx Standard Overnight
Package Type FedEx Envelope
Zone 8
Packages 1
Weight 1.0 lbs, 0.5 kgs
Delivered Dec 19, 2002 10:30
Svc Area A1
Signed by .MAXWELL
FedEx Use 352357210/00266/_

Sender

Recipient

EDWINA SIMMONDS

Transportation Charge	15.25
Discount	-2.44
Fuel Surcharge	0.51
Total Transportation Charges	USD \$ 13.32

Shipment Detail Subtotal USD \$ 41.52

Picked up: Dec 12, 2002

Payor: Third Party

Reference: NO REFERENCE INFORMATION

Fuel Surcharge - FedEx has applied a fuel surcharge of 4.00% to this shipment.
Distance Based Pricing, Zone 7
Release signature on file.

Powership
Tracking ID 622794984940
Service Type FedEx Priority Overnight
Package Type Customer Packaging
Zone 7
Packages 1
Weight 11.0 lbs, 5.0 kgs
Delivered Dec 13, 2002 11:01
Svc Area AA
Signed by 14794574
FedEx Use 081352204/01596/02

Sender

Recipient

JEPPESEN SANDERSON

Transportation Charge	54.50
Discount	-5.45
Fuel Surcharge	1.96
Residential Delivery	1.35
Total Transportation Charges	USD \$ 52.36

Shipment Detail Subtotal USD \$ 52.36

EFTA00040211



Invoice Number: 4-495-75031

Invoice Date: Dec 23, 2002

Account Number:

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FedEx Ground Summary

Date	Packages	Weight	Base Charges	Other Charges	Total Charges
Prepaid Ground					
12/05				5.00	5.00
12/12	4	12.0	16.57	0.21	16.78
12/14	1	1.0	3.58	0.04	3.62
Package Total	5	13.0	20.15	5.25	25.40
Weekly Service Charge 12/13/2002				11.00	11.00
Total Charges	5	13.0	20.15	16.25	36.40

e - Other charges billed out of week.



Invoice Number: 4-495-75031

Invoice Date: Dec 23, 2002

Account Number:

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FedEx Ground Prepaid Detail

Purchase Order Number	Customer Reference	Tracking ID	Svc Code	Dest Zip	Zone	Weight	Base Charge	Other Charge	Total Charge
Pickup Date: 12/05									
		068 275710000358	019	94538	0	0.0		5.00(6)	5.00
Pickup Date: 12/12									
		068 275710000365	019	43230	004	3.0	4.09	0.05(35)	4.14
		068 275710000396	019	43054	004	2.0	3.87	0.05(35)	3.92
		068 275710000402	019	43054	004	3.0	4.09	0.05(35)	4.14
		068 275710000419	019	60606	005	4.0	4.52	0.06(35)	4.58
Pickup Date: 12/14									
		068 275710000426	019	43054	004	1.0	3.58	0.04(35)	3.62





Invoice Number: 4-495-75031

Invoice Date: Dec 23, 2002

Account Number: [REDACTED]

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FedEx Ground Address Correction

Original Address		Corrected Address	
TRACKING ID:		068 275710000358	
VIALTA INC		VIALTA INC	
[REDACTED]		[REDACTED]	

FedEx Ground Reference Chart

SERVICE CODES	FEDEX HOME DELIVERY SERVICE CODES	ZONE DEFINITIONS
FedEx Ground		
015 AutoPOD, Prepaid, Domestic	800 AutoPOD, Prepaid	2-8 Ground Service 48 contiguous states
016 COD, Prepaid, Domestic	804 Prepaid	9 Service to Hawaii
017 ECOD, Prepaid, Domestic	808 Signature, Prepaid	10 Service to Puerto Rico
018 FedEx Ground, PRP, Prepaid, Domestic	810 Evening, AutoPOD, Prepaid	14 Service to Oahu
019 Prepaid, Domestic	814 Evening, Prepaid	17 Service to Alaska
020 AutoPOD, Collect, Domestic	818 Evening, Signature, Prepaid	22 Service within Alaska
021 Collect, Domestic	820 Date Certain, AutoPOD, Prepaid	23 Service from Alaska
030 COD, Collect, Domestic	824 Date Certain, Prepaid	25 Service from Alaska
031 ECOD, Collect, Domestic	828 Date Certain, Signature, Prepaid	51 & 54 Service to Canada
032 Cash COD, Collect, Domestic	830 Appointment, AutoPOD, Prepaid	82 & 96 Service from Hawaii (Deferred)
033 Guaranteed Funds COD, Collect, Domestic	834 Appointment, Prepaid	
136 Ground, Prepaid, Return Manager	835 Adult AutoPOD, Prepaid	
408 Guaranteed Funds COD, Prepaid, Domestic	836 Adult Signature, Prepaid	
409 Cash COD, Prepaid, Domestic	837 Evening, AdultPOD, Prepaid	
410 AutoPOD, COD, Prepaid, Domestic	838 Evening, Adult Signature, Prepaid	
411 AutoPOD, COD, Collect, Domestic	839 Date Certain, Adult AutoPOD, Prepaid	
412 AutoPOD, ECOD, Prepaid, Domestic	840 Date Certain, Adult Signature, Prepaid	
413 AutoPOD, ECOD, Collect, Domestic	841 Appointment, Adult Signature, Prepaid	
414 AutoPOD, PRP, Prepaid, Domestic	842 Appointment, AdultPOD, Prepaid	
415 AutoPOD, Guaranteed Funds COD, Ppd, Dom.	850 Bill 3rd Party	(1) C.O.D. (Collect on Delivery)
416 AutoPOD, Cash COD, Prepaid, Domestic	851 Bill 3rd Party, Auto POD	(2) A.O.D. (Acknowledgement of Delivery)
417 Bill 3rd Party, Domestic	852 Bill 3rd Party, Signature	(3) Call Tag
418 Bill 3rd Party, AutoPOD, Domestic	853 Evening, Bill 3rd Party	(4) Oversize > 84" Combined Length and Girth
419 Bill 3rd Party, COD, Domestic	854 Evening, Bill 3rd Party, AutoPOD	(5) Declared Value
420 Bill 3rd Party, Guaranteed Funds COD, Dom.	855 Evening, Bill 3rd Party, Signature	(6) Address Correction
421 Bill 3rd Party, Cash COD, Domestic	856 Date Certain, Bill 3rd Party	(7) Hazardous Material
422 Bill Recipient, Domestic	857 Date Certain, Bill 3rd Party, AutoPOD	(8) Automatic Proof of Delivery
423 Bill Recipient, AutoPOD, Domestic	858 Date Certain, Bill 3rd Party, Signature	(9) Additional Handling
424 Bill Recipient, COD, Domestic	859 Appointment, Bill 3rd Party	(10) Oversize Extra Service Fee
425 Bill Recipient, Guaranteed Funds COD, Dom.	860 Appointment, Bill 3rd Party, AutoPOD	(11) Overweight > 150 lbs.
426 Bill Recipient, Cash COD, Dom.	861 Bill 3rd Party, Adult AutoPOD	(12) Electronic C.O.D., 24 hours
427 AutoPOD, Cash COD, Collect, Domestic	862 Bill 3rd Party, Adult Signature	(13) Electronic C.O.D., 48 hours
428 AutoPOD, Guaranteed Funds COD, Collect, Dom.	863 Evening, Bill 3rd Party, Adult AutoPOD	(14) FedEx Ground Residential
429 ECOD, Bill 3rd Party, Domestic	864 Evening, Bill 3rd Party, Adult Signature	(15) FedEx Ground Residential - Rural
430 AutoPOD, COD, Bill 3rd Party, Domestic	865 Date Certain, Bill 3rd Party, Adult AutoPOD	(16) Return Manager Transmission Fee
431 AutoPOD, ECOD, Bill 3rd Party, Domestic	866 Date Certain, Bill 3rd Party, Adult Signature	(20) FedEx Signature Home Delivery
432 AutoPOD, Cash COD, Bill 3rd Party, Domestic	869 Bill Recipient	(21) FedEx Date Certain Home Delivery
433 AutoPOD, Guaranteed Funds COD, Bill 3rd Party, Dom.	870 Bill Recipient, AutoPOD	(22) FedEx Appointment Home Delivery
434 ECOD, Bill Recipient, Domestic	871 Bill Recipient, Signature	(23) FedEx Evening Home Delivery
435 AutoPOD, COD, Bill Recipient, Domestic	872 Evening, Bill Recipient	(24) FedEx Home Delivery Residential
436 AutoPOD, ECOD, Bill Recipient, Domestic	873 Evening, Bill Recipient, AutoPOD	(25) FedEx Home Delivery Residential - Rural
437 AutoPOD, Cash COD, Bill Recipient, Domestic	874 Evening, Bill Recipient, Signature	(26) Cash C.O.D. Charge
438 AutoPOD, Guaranteed Funds COD, Bill Recipient, Dom.	875 Date Certain, Bill Recipient	(27) Cash C.O.D. High Density Charge
	876 Date Certain, Bill Recipient, AutoPOD	(28) Cash C.O.D. Extra Difference Charge
	877 Date Certain, Bill Recipient, Signature	(29) Proof of Delivery Advantage Charge
	878 Appointment, Bill Recipient	(30) FedEx Home Delivery Forced Appointment
	879 Appointment, Bill Recipient, AutoPOD	(31) FedEx Home Delivery Surcharge - Out of Service Area
	880 Bill Recipient, Adult AutoPOD	(32) FedEx Home Delivery Surcharge - Hazardous Material
	881 Bill Recipient, Adult Signature	(33) FedEx Home Delivery Surcharge - Over 70 Pounds
	882 Evening, Bill Recipient, Adult AutoPOD	(34) FedEx Home Delivery Surcharge - COD Package
	883 Evening, Bill Recipient, Adult Signature	(35) Fuel Surcharge
	884 Date Certain, Bill Recipient, Adult AutoPOD	(36) Oversize > 108" Combined Length and Girth
	885 Date Certain, Bill Recipient, Adult Signature	(37) Oversize > 108" in Length
	886 Appointment, Bill Recipient, Adult Signature	(38) Oversize > 130" Combined Length and Girth
	887 Appointment, Bill Recipient, Adult AutoPOD	(39) Supplemental Oversize Package Charge
		(40) Canada Goods & Services Tax - GST
		(41) Canada Harmonized and Service Tax - HST
		(42) Canada Quebec Sales Tax - QST
		(43) Reserved
		(44) Return Manager
		(45) Credit Card Decline Surcharge
		(46) Consolidated Returns Polybag
		(47) Consolidated Returns Package 2x2x4 - 2x6x8
		(48) Consolidated Returns Package 4x4x6 - 4x8x12
		(49) Consolidated Returns Package 6x6x10 - 6x10x16
		(50) Consolidated Returns Package 8x10x12 - 10x12x16
		(51) Consolidated Returns Package Flat Charge
		(52) Consolidated Returns Oversize Package Charge
		(53) Ship Manager/Return Manager
		(54) Security Surcharge
FedEx International Ground		
022 AutoPOD, Prepaid		
023 COD, Prepaid		
024 ECOD, Prepaid		
025 PRP, Prepaid		
026 Prepaid		
027 AutoPOD, Collect		
028 Collect		
478 Guaranteed Funds COD, Prepaid		
479 Cash COD, Prepaid		
480 AutoPOD, COD, Prepaid		
481 AutoPOD, Collect		
482 AutoPOD, ECOD, Prepaid		
483 AutoPOD, ECOD, Collect		
484 AutoPOD, PRP, Prepaid		
485 AutoPOD, Guaranteed Funds COD, Prepaid		
486 AutoPOD, Cash COD, Prepaid		
487 Bill 3rd Party		
488 Bill 3rd Party, AutoPOD		
489 Bill 3rd Party, COD		
490 Bill 3rd Party, Guaranteed Funds COD		
491 Bill 3rd Party, Cash COD		
492 Bill Recipient		
493 Bill Recipient, AutoPOD		
494 Bill Recipient, COD		
495 Bill Recipient, Guaranteed Funds COD		
496 Bill Recipient, Cash COD		

From: [REDACTED]

To: [REDACTED]

Cc: [REDACTED]

Subject: RE: Epstein

Date: Fri, 30 Nov 2018 14:35:54 +0000

Importance: Normal

There was a motion for summary judgment in the federal suit the victims filed, but the facts centered on victim notification, so the documents are largely communications between the prosecutors and Epstein's attorneys regarding victim notification.

I saw references to deposition transcripts in some of the reporting, but as far as I can tell those cases settled without summary judgment practice.

-----Original Message-----

From: [REDACTED]

Sent: [REDACTED]

To: [REDACTED]

Cc: [REDACTED]

Subject: Re: Epstein

Thanks. And in either the state or federal action, has there been motion practice in which deposition transcripts have been filed? Motion for summary judgement, for example?

Sent from my iPhone

> On Nov 30, 2018, at 9:28 AM, [REDACTED] wrote:

>

> It's in Palm Beach County Circuit Court. It's not the lawsuit the victims filed against the government to invalidate the NPA. And it's not one of the suits the victims filed against Epstein. It's a lawsuit that an attorney who represented multiple victims filed against Epstein for malicious prosecution. Sort of a complicated background: previously Epstein sued the lawyer, claiming that the lawyer was involved in an unrelated fraud that the lawyer's law partner was convicted of-- the fraud related to an Epstein business. The lawyer is now suing Epstein for malicious prosecution, claiming that he wrongfully filed the old lawsuit in retaliation for representing Epstein's victims.

>

> -----Original Message-----

> **From:** [REDACTED]

> **Sent:** Friday, November 30, 2018 9:25 AM

> **Subject:** Epstein

>

> The December 4 trial - is that the one against DOJ or against Epstein? State or federal court?

>

> Sent from my iPhone

From: "[REDACTED]" <[REDACTED]>

To: "[REDACTED] (USANYS)" <[REDACTED]>, "[REDACTED] (USANYS)" <[REDACTED]>

Subject: Epstein

Date: Fri, 30 Nov 2018 01:28:51 +0000

Importance: Normal

FYI, from the Miami Herald article:

In 2011, Epstein petitioned to have his sex offender status reduced in New York, where he has a home and is required to register every 90 days. In New York, he is classified as a level 3 offender — the highest safety risk because of his likelihood to re-offend.

A prosecutor under New York County District Attorney [REDACTED] argued on Epstein's behalf, telling New York Supreme Court Judge [REDACTED] that the Florida case never led to an indictment and that his underage victims failed to cooperate in the case. [REDACTED], however, denied the petition, expressing astonishment that a New York prosecutor would make such a request on behalf of a serial sex offender accused of molesting so many girls.

"I have to tell you, I'm a little overwhelmed because I have never seen a prosecutor's office do anything like this. I have done so many [sex offender registration hearings] much less troubling than this one where the [prosecutor] would never make a downward argument like this," she said.

[REDACTED]
Assistant United States Attorney
Southern District of New York
One Saint Andrew's Plaza
New York, NY 10007
[REDACTED]
[REDACTED]

From: [REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

Subject: RE: Maxwell Letter re Co-Conspirator Statements

Date: Fri, 12 Nov 2021 22:41:04 +0000

Attachments: 2021-11-12_GM_letter_re_CC_statements_v2_-_TAM.docx

Thanks, combined edits attached

From: [REDACTED] >

Sent: Friday, November 12, 2021 1:14 PM

To: [REDACTED]

[REDACTED]

[REDACTED]

Subject: Maxwell Letter re Co-Conspirator Statements

[REDACTED],

Attached for review is a draft letter to AJN seeking to admit certain co-conspirator statements. This is due at midnight tonight.

For reference, I've also attached the letters we exchanged with the defense on this topic.

Thanks,

[REDACTED]

From: "[REDACTED]" <[REDACTED]>
To: Christian Everdell [REDACTED], Laura Menninger [REDACTED], Jeff Pagliuca [REDACTED], "BOBBI C STERNHEIM" [REDACTED]
Cc: "[REDACTED]" <[REDACTED]>, "[REDACTED]" (USANYS) <[REDACTED]>, "[REDACTED]" <[REDACTED]>

Subject: RE: Maxwell - Verdict form and proposed stipulations

Date: Sat, 13 Nov 2021 17:15:37 +0000

Attachments: GX_1007 - CA depo (2021.11.13_version).pdf; GX_1008 - GM depo (2021.11.13_version).pdf; GX_1006 - DA depo (2021.11.13_version).pdf

Hey Chris,

Apologies for the mistake about your name. Attached are corrected versions of those three stipulations.

We understand that you need more time to consider stipulating to the authenticity of the birth certificates and [REDACTED] statement, but we do think we need either a stipulation or decision that they are self-authenticating quickly. We're planning to raise the issue with Judge Nathan on Monday so we can seek a briefing schedule. If you end up with a decision by then, please just let us know.

Thanks,
[REDACTED]

From: Christian Everdell <[REDACTED]>
Sent: Friday, November 12, 2021 9:49 PM
To: [REDACTED] <[REDACTED]>; Laura Menninger <[REDACTED]>; Jeff Pagliuca <[REDACTED]>; "BOBBI C STERNHEIM" <[REDACTED]>
Cc: [REDACTED] <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] <[REDACTED]>
Subject: [EXTERNAL] RE: Maxwell - Verdict form and proposed stipulations

[REDACTED] -

Circling back to you from our conversation earlier today. We are prepared to stipulate to the authenticity of the three depositions (CA, DA and GM). Please send me revised stipulations that correct my name to "Christian Everdell" from "Christopher Everdell" and I will sign them and return them to you.

At this time, we are not prepared to stipulate to the authenticity of the [REDACTED] statement or the birth certificates. We are not saying that we will never stipulate to these documents. We just need time to consider this issue as a team and your position re: self-authentication. We don't think it is necessary for you to brief this issue, but obviously it is your decision to do so if you feel you must because of witness travel, etc.

Thanks,

Chris

From: [REDACTED] <[REDACTED]>
Sent: Monday, November 8, 2021 6:32 PM
To: Christian Everdell [REDACTED]; Laura Menninger [REDACTED]; Jeff Pagliuca [REDACTED]; "BOBBI C STERNHEIM" <[REDACTED]>

Cc: [REDACTED] <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>; [REDACTED]
[REDACTED] <[REDACTED]>

Subject: RE: Maxwell - Verdict form and proposed stips

Counsel,

Attached is a second set of proposed stips. Please let us know in advance of Wednesday's conference whether you are willing to sign these and the ones we sent you previously, so we can seek a briefing schedule on the exhibits that are self-authenticating if necessary.

Thanks,

From: [REDACTED]

Sent: Friday, October 29, 2021 10:19 PM

To: Christian Everdell <[REDACTED]>; Laura Menninger <[REDACTED]>; Jeff Pagliuca

<[REDACTED]>; 'BOBBI C STERNHEIM' <[REDACTED]>

Cc: [REDACTED] <[REDACTED]>; Lara E. Pomerantz ([REDACTED])

<[REDACTED]>; [REDACTED] <[REDACTED]>

Subject: Maxwell - Verdict form and proposed stips

Counsel,

Although we've sent you our draft joint proposed request to charge, we haven't send you a verdict sheet. One is attached here.

We've also attached four proposed stips. Please return them to us by a week from today – November 5 – so we know whether to begin preparing records custodians. We also anticipate sending you a few additional steps.

Thanks,

[REDACTED]
Assistant United States Attorney
Southern District of New York
1 Saint Andrews Plaza
New York, New York 10007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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	:	
UNITED STATES OF AMERICA	:	
	:	<u>STIPULATION</u>
- v. -	:	
	:	S2 20 CR 330 (AJN)
GHISLAINE MAXWELL,	:	
	:	
Defendant.	:	
-----	x	

IT IS HEREBY STIPULATED AND AGREED by and among the United States of America, by Damian Williams, United States Attorney for the Southern District of New York, and [REDACTED], [REDACTED], [REDACTED], and [REDACTED], Assistant United States Attorneys, of counsel, and defendant Ghislaine Maxwell, by and with the consent of her attorneys, Christian Everdell, Esq., Laura Menninger, Esq., Jeffrey Pagliuca, Esq., and Bobbi Sternheim, Esq., that:

1. The documents marked 3505-043 and 3505-044 are a true and accurate copy of the transcript of the deposition taken on December 4, 2009 in West Palm Beach, Florida.

2. IT IS FURTHER STIPULATED AND AGREED THAT this stipulation, marked as Government Exhibit 1007, may be received in evidence at trial.

Dated: November __, 2021
New York, New York

DAMIAN WILLIAMS
United States Attorney for the
Southern District of New York

By:

_____/_____
_____/_____
Assistant United States Attorneys
Southern District of New York

Christian Everdell, Esq. / Laura Menninger, Esq.
Jeffrey Pagliuca, Esq. / Bobbi Sternheim, Esq.
Attorneys for Defendant Ghislaine Maxwell

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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	:	
UNITED STATES OF AMERICA	:	
	:	<u>STIPULATION</u>
- v. -	:	
	:	S2 20 CR 330 (AJN)
GHISLAINE MAXWELL,	:	
	:	
Defendant.	:	
-----	x	

IT IS HEREBY STIPULATED AND AGREED by and among the United States of America, by Damian Williams, United States Attorney for the Southern District of New York, and [REDACTED], [REDACTED], [REDACTED], and [REDACTED], Assistant United States Attorneys, of counsel, and defendant Ghislaine Maxwell, by and with the consent of her attorneys, Christian Everdell, Esq., Laura Menninger, Esq., Jeffrey Pagliuca, Esq., and Bobbi Sternheim, Esq., that:

1. The document marked SDNY_GM_000143740 through SDNY_GM_00144203 is a true and accurate copy of a transcript of the deposition of Ghislaine Maxwell, the defendant, taken on April 22, 2016, in New York, New York.

2. The document marked SDNY_GM_00144204 through SDNY_GM_00144423 is a true and accurate copy of a transcript of the deposition of Ghislaine Maxwell, the defendant, taken on July 22, 2016, in New York, New York.

3. IT IS FURTHER STIPULATED AND AGREED THAT this stipulation, marked as Government Exhibit 1008, may be received in evidence at trial.

Dated: November __, 2021
New York, New York

DAMIAN WILLIAMS
United States Attorney for the
Southern District of New York

By:

_____/_____
_____/_____
Assistant United States Attorneys
Southern District of New York

Christian Everdell, Esq. / Laura Menninger, Esq.
Jeffrey Pagliuca, Esq. / Bobbi Sternheim, Esq.
Attorneys for Defendant Ghislaine Maxwell

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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	:	
UNITED STATES OF AMERICA	:	
	:	<u>STIPULATION</u>
- v. -	:	
	:	
GHISLAINE MAXWELL,	:	S2 20 CR 330 (AJN)
	:	
Defendant.	:	
	:	
-----	x	

IT IS HEREBY STIPULATED AND AGREED by and among the United States of America, by Damian Williams, United States Attorney for the Southern District of New York, and [REDACTED], [REDACTED], [REDACTED], and [REDACTED], Assistant United States Attorneys, of counsel, and defendant Ghislaine Maxwell, by and with the consent of her attorneys, Christian Everdell, Esq., Laura Menninger, Esq., Jeffrey Pagliuca, Esq., and Bobbi Sternheim, Esq., that:

1. The document marked 3506-001 is a true and accurate copy of a transcript of the deposition taken on November 6, 2009 in West Palm Beach, Florida.

2. IT IS FURTHER STIPULATED AND AGREED THAT this stipulation,
marked as Government Exhibit 1006 may be received in evidence at trial.

Dated: November __, 2021
New York, New York

DAMIAN WILLIAMS
United States Attorney for the
Southern District of New York

By:

_____/_____
_____/_____
Assistant United States Attorneys
Southern District of New York

Christian Everdell, Esq. / Laura Menninger, Esq.
Jeffrey Pagliuca, Esq. / Bobbi Sternheim, Esq.
Attorneys for Defendant Ghislaine Maxwell

From: "[REDACTED]"

To: [REDACTED]

Subject: Re: Ghislaine Maxwell speaks from behind bars for the first time in the Mail on Sunday | Daily Mail Online

Date: Sat, 13 Nov 2021 19:58:11 +0000

Hoo boy

Sent from my iPhone

On Nov 13, 2021, at 12:06, [REDACTED] > wrote:

Begin forwarded message:

From: [REDACTED]

Date: November 13, 2021 at 12:00:10 PM EST

To: "[REDACTED]" >, [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

Subject: Ghislaine Maxwell speaks from behind bars for the first time in the Mail on Sunday | Daily Mail Online

Not sure if this is a concern, but a Daily Mail reporter somehow got an interview with her.

<https://www.dailymail.co.uk/news/article-10198309/Ghislaine-Maxwell-speaks-bars-time-Mail-Sunday.html>

Sent from my iPhone

From: "[REDACTED]" >
To: "[REDACTED]" >
Cc: "[REDACTED]"
[REDACTED]
[REDACTED]

Subject: Re: Ghislaine Maxwell speaks from behind bars for the first time in the Mail on Sunday | Daily Mail Online

Date: Sun, 14 Nov 2021 15:07:29 +0000

Full interview below:

<https://www.dailymail.co.uk/news/article-10198663/Ghislaine-Maxwell-tells-inside-prison-cell.html>

Sent from my iPhone

On Nov 13, 2021, at 12:06 PM, [REDACTED] > wrote:

Thanks very much for flagging. The article suggests a fuller interview is coming out tomorrow or Monday. Would you mind sending that along if you see it, please?

-----Original Message-----

From: [REDACTED] >
Sent: Saturday, November 13, 2021 12:00 PM
To: [REDACTED]; [REDACTED] >;
[REDACTED]
[REDACTED]
Cc: [REDACTED]
Subject: Ghislaine Maxwell speaks from behind bars for the first time in the Mail on Sunday | Daily Mail Online

Not sure if this is a concern, but a Daily Mail reporter somehow got an interview with her.

<https://www.dailymail.co.uk/news/article-10198309/Ghislaine-Maxwell-speaks-bars-time-Mail-Sunday.html>

Sent from my iPhone

From: Christian Everdell [REDACTED] >

To: Nathan NYSD Chambers <[REDACTED]>

Cc: "[REDACTED]
[REDACTED], Jeff Pagliuca
[REDACTED], "Laura Menninger" [REDACTED], BOBBI C
STERNHEIM <[REDACTED]>

Subject: [EXTERNAL] United States v. Ghislaine Maxwell, S2 20 Cr. 330 (AJN) -- Proposed Juror Strikes

Date: Sun, 14 Nov 2021 23:34:17 +0000

Attachments: 2021.11.14_Letter_to_Judge_Nathan_re_Juror_Strikes.PDF

Inline-Images: image001.gif; image002.gif

Chambers --

The parties respectfully submit the attached joint letter in response to the Court's email earlier today regarding proposed juror strikes. The letter also includes a small number of modifications to the defense's previous strikes.

Regards,

Christian R Everdell

COHEN & GRESSER LLP

800 Third Avenue
New York, NY 10022

[REDACTED] | [view bio](#)
www.cohengresser.com

New York | Paris | Washington DC | London



CONFIDENTIALITY NOTICE: The information contained in this e-mail may be confidential and/or privileged. This e-mail is intended to be reviewed initially by only the individual named above. If the reader of this e-mail is not the intended recipient or a representative of the intended recipient, you are hereby notified that any review, dissemination or copying of this e-mail or the information contained herein is prohibited. If you have received this e-mail in error, please immediately notify the sender by telephone and permanently delete this e-mail. Thank you.

PRIVACY: A complete copy of our privacy policy can be viewed at: <https://www.cohengresser.com/privacy-policy>.

EFTA00040229

From: "[REDACTED]" <[REDACTED]>

To: Nathan NYSD Chambers <[REDACTED]>

Cc: "[REDACTED] (USANYYS)" <[REDACTED]>, "[REDACTED]" <[REDACTED]>, "[REDACTED]" <[REDACTED]>, "[REDACTED]" <[REDACTED]>, "[REDACTED]" <[REDACTED]>

Subject: United States v. Maxwell, 20 Cr. 330, list of names and places

Date: Mon, 15 Nov 2021 03:33:46 +0000

Attachments: 2021-11-14_joint_letter_regarding_names_and_places.pdf

Chambers,

The parties respectfully submit the attached letter providing a list of names and places for voir dire.

Thank you.

[REDACTED]
Assistant United States Attorney
Southern District of New York
One Saint Andrew's Plaza
New York, NY 10007
[REDACTED]



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

November 14, 2021

BY EMAIL

The Honorable Alison J. Nathan
United States District Court
Southern District of New York
United States Courthouse
40 Foley Square
New York, New York 10007

Re: *United States v. Ghislaine Maxwell*, 20 Cr. 330 (AJN)

Dear Judge Nathan:

The parties respectfully submit this joint letter to provide the Court with a list of names, places, and relevant entities, for purposes of examining prospective jurors during voir dire. This letter is respectfully requested to be filed under seal to protect the privacy of witnesses and third parties.

I. List of Names

The following is a list of names that jurors may hear at trial:

- Juan Alessi
- Maria Alessi
- [REDACTED]
- Janusz Banasiak
- [REDACTED]
- Daniel Besselsen
- [REDACTED]
- [REDACTED]
- [REDACTED]
- Michael Buscemi

- [REDACTED]
- Tracy Chappell
- [REDACTED]
- Dr. Park Dietz
- Eva Anderson Dubin
- Glen Dubin
- [REDACTED]
- Bennett Gershman
- Lesley Groff
- Dr. Ryan Hall
- [REDACTED]
- [REDACTED]
- [REDACTED]
- Jordana Feldman
- [REDACTED]
- Stephen Flatley
- [REDACTED]
- Robert Hanson
- [REDACTED]
- [REDACTED]
- Paul Kane
- Robert Kelso
- [REDACTED]
- [REDACTED]
- Gerald LaPorte
- [REDACTED]
- Dr. Elizabeth Loftus
- John Lopez
- [REDACTED]

- [REDACTED]
- Pat McHugh
- [REDACTED]
- [REDACTED]
- Jennifer Naso
- [REDACTED]
- [REDACTED]
- [REDACTED]
- David Rodgers
- Alfredo Rodriguez
- Dr. Lisa Rocchio
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- Lawrence Visoski
- Les Wexner
- [REDACTED]

II. List of Places

The following is a list of places that may be discussed at trial:

- 358 El Brillo Way, Palm Beach, Florida
- Zorro Ranch, 39 Zorro Ranch Road, Stanley, New Mexico
- 9 East 71st Street, New York, New York
- [REDACTED] New York, New York
- [REDACTED] New York, New York
- Little St. James Island, U.S. Virgin Islands
- [REDACTED] London
- [REDACTED] Camp, [REDACTED]

III. List of Entities

The following is a list of entities, institutions, and programs that may be referenced at trial:

- [REDACTED] Camp
- [REDACTED] School
- [REDACTED] School
- [REDACTED] School [REDACTED]
- Mar-a-Lago
- Days of Our Lives

Respectfully submitted,

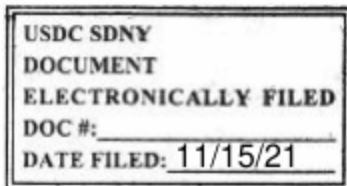
DAMIAN WILLIAMS
United States Attorney

By: s/_____

[REDACTED]

Assistant United States Attorneys
Southern District of New York

Cc: Defense Counsel (By email)



Smith Villazor LLP

New York, New York 10019
www.smithvillazor.com

Patrick J. Smith

SMITH | VILLAZOR

November 15, 2021

BY E-MAIL to [REDACTED]

The Honorable Alison J. Nathan
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 10007

Re: United States v. Maxwell, No. 20 Cr. 330

Dear Judge Nathan:

We represent [REDACTED], the independent administrator of the Epstein Victims' Compensation Program, the litigation-alternative program established to confidentially resolve claims of sexual abuse against Jeffrey Epstein, his Estate, and other related individuals and entities. This afternoon we were informed by counsel for the government that the defendant has sought, and the Court intends to authorize, a subpoena directed to [REDACTED] under Federal Rule of Criminal Procedure 17(c) for certain documents. We write to (i) inform the Court that we are authorized to accept service of the subpoena on behalf of [REDACTED], and (ii) request a briefing schedule for [REDACTED] anticipated motion to quash the subpoena.

We understand that the government intends to file a motion to quash the subpoena, with a deadline of this Wednesday, November 17, 2021. Given that we have just learned of the subpoena today, the issues it presents, and mindful of the impending start date of trial, we respectfully request until November 23, 2021 to file a motion to quash on [REDACTED] behalf.

We are available should the Court have any questions.

Respectfully submitted,

/s/ Patrick J. Smith

Patrick J. Smith
Smith Villazor LLP

cc:

[REDACTED], Christian R. Everdell, Esq., Jeffrey S. Pagliuca, Esq., Laura A. Menninger, Esq., Mark Stewart Cohen, Esq., Bobbi C. Sternheim, Esq. (by e-mail)

[REDACTED] may file a motion to quash the subpoena on or before Friday, November 19, 2021. The motion should not repeat arguments made in the Government's motion to quash, which is due on Thursday, November 18, 2021. The Defense shall respond to both motions on or before Monday, November 22, 2021. This memo endorsement is filed temporarily under seal to allow the parties to propose redactions. Any redactions to this letter and the Defendant's motion must be filed on the docket by November 21, 2021. SO ORDERED.

Alison J. Nathan

11/15/21

From: "[REDACTED]" <[REDACTED]>
To: "Stoddart, Allison" <[REDACTED]>
Cc: "Sahni, Anjan" <[REDACTED]> "[REDACTED] (USANYS)" <[REDACTED]>, <[REDACTED]>, "[REDACTED]" <[REDACTED]>, "[REDACTED]" <[REDACTED]>
Subject: RE: [EXTERNAL] RE: United States v. Ghislaine Maxwell, 20 Cr. 330 (AJN)
Date: Mon, 15 Nov 2021 23:16:12 +0000

Hi Allison,

I wanted to follow up on scheduling, since this week is a bit tight and I know everyone is busy. I'm available from 7 p.m. onwards tomorrow evening, Wednesday, or Thursday. I'm also available this weekend, if that's easier. Apologies for proposing evening/weekend times, but jury selection this week makes scheduling a little difficult. I'm also free on Monday from 12-4 if it's not possible to meet sooner.

Thanks,

[REDACTED]

From: Stoddart, Allison <[REDACTED]>
Sent: Wednesday, November 10, 2021 8:35 PM
To: [REDACTED] <[REDACTED]>
Cc: Sahni, Anjan <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>
Subject: RE: [EXTERNAL] RE: United States v. Ghislaine Maxwell, 20 Cr. 330 (AJN)

Hi [REDACTED]

Apologies for not responding sooner. I am still trying to confirm timing, but looking at next week, not tomorrow.

Thanks,
Allison

From: [REDACTED] <[REDACTED]>
Sent: Wednesday, November 10, 2021 7:48 PM
To: Stoddart, Allison <[REDACTED]>
Cc: Sahni, Anjan <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>
Subject: RE: [EXTERNAL] RE: United States v. Ghislaine Maxwell, 20 Cr. 330 (AJN)

EXTERNAL SENDER

Hi Allison,

Just checking in on timing, in case we're meeting tomorrow. If not, no worries, next week is fine.

Thanks,

[REDACTED]

From: Stoddart, Allison <[REDACTED]>
Sent: Tuesday, November 9, 2021 8:43 PM
To: [REDACTED] <[REDACTED]>
Cc: Sahni, Anjan <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>
Subject: RE: [EXTERNAL] RE: United States v. Ghislaine Maxwell, 20 Cr. 330 (AJN)

Thanks [REDACTED]. I'll check and get back to you.

Allison

From: [REDACTED] <[REDACTED]>
Sent: Tuesday, November 9, 2021 8:07 PM
To: Stoddart, Allison <Allison.Stoddart@wilmerhale.com>
Cc: Sahni, Anjan <Anjan.Sahni@wilmerhale.com>; [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>
Subject: Re: [EXTERNAL] RE: United States v. Ghislaine Maxwell, 20 Cr. 330 (AJN)

EXTERNAL SENDER

Are there times on Thursday afternoon or evening that would work? I can move a few things around if he is available. Otherwise, I'm available anytime next week in the the morning from 7:30-8:30, or in the evening from 5:30 p.m. onwards, or anytime on the weekend. Thanks very much for your help arranging the meeting.

On Nov 9, 2021, at 7:23 PM, Stoddart, Allison <[REDACTED]> wrote:

Thanks, [REDACTED]. Pat is traveling on Friday and Monday unfortunately. I know jury selection is scheduled to be underway next week, but if tomorrow doesn't work, would there be times next week that might?

Thanks,
Allison

From: [REDACTED] <[REDACTED]>
Sent: Tuesday, November 9, 2021 6:32 PM
To: Stoddart, Allison <[REDACTED]>
Cc: Sahni, Anjan <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>
Subject: RE: [EXTERNAL] RE: United States v. Ghislaine Maxwell, 20 Cr. 330 (AJN)

EXTERNAL SENDER

Hi Allison,

Thanks very much. We'll be in court most of the day for a hearing tomorrow, but is there a time on Friday that would work?

Thanks,

[REDACTED]

From: Stoddart, Allison [REDACTED]
Sent: Tuesday, November 9, 2021 3:50 PM
To: [REDACTED] <[REDACTED]>
Cc: Sahni, Anjan [REDACTED]; [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>
Subject: RE: [EXTERNAL] RE: United States v. Ghislaine Maxwell, 20 Cr. 330 (AJN)

Hi [REDACTED]

When we last spoke, we discussed setting up a call with your team and Pat McHugh. Would tomorrow afternoon work for that call?

Thanks very much,
Allison

From: [REDACTED] <[REDACTED]>
Sent: Wednesday, October 27, 2021 9:02 AM
To: Stoddart, Allison [REDACTED]
Cc: Sahni, Anjan [REDACTED]; [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>
Subject: RE: [EXTERNAL] RE: United States v. Ghislaine Maxwell, 20 Cr. 330 (AJN)

EXTERNAL SENDER

Hi Allison,

Thanks— would 3 p.m. work for a call today?

From: Stoddart, Allison <[REDACTED]>
Sent: Wednesday, October 27, 2021 7:48 AM
To: [REDACTED] <[REDACTED]>
Cc: Sahni, Anjan <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>
Subject: RE: [EXTERNAL] RE: United States v. Ghislaine Maxwell, 20 Cr. 330 (AJN)

Hi [REDACTED]

We wanted to provide an update on the trial witness topic. Do you have any time this afternoon or tomorrow for a brief call?

Thanks,
Allison

From: Stoddart, Allison
Sent: Monday, October 18, 2021 9:05 PM
To: [REDACTED] <[REDACTED]>
Cc: Sahni, Anjan <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>
Subject: RE: [EXTERNAL] RE: United States v. Ghislaine Maxwell, 20 Cr. 330 (AJN)

Great. Thanks, [REDACTED] Appreciate it.

Allison

From: [REDACTED] <[REDACTED]>

Sent: Monday, October 18, 2021 8:58 PM

To: Stoddart, Allison <[REDACTED]>

Cc: Sahni, Anjan <[REDACTED]> (USANY) <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>

Subject: RE: [EXTERNAL] RE: United States v. Ghislaine Maxwell, 20 Cr. 330 (AJN)

EXTERNAL SENDER

Hi Allison,

Thanks, that's not a problem. I'm attaching a broadly worded subpoena to the bank, but please let me know if you'd like me to direct this more specifically to a particular entity or officer.

Thanks,

[REDACTED]

From: Stoddart, Allison <[REDACTED]>

Sent: Monday, October 18, 2021 8:57 AM

To: [REDACTED] <[REDACTED]>

Cc: Sahni, Anjan <[REDACTED]>; [REDACTED] (USANY) <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>

Subject: RE: [EXTERNAL] RE: United States v. Ghislaine Maxwell, 20 Cr. 330 (AJN)

[REDACTED]

Following up on our last discussion, JPMorgan is working on identifying a witness for trial. Are you able to provide JPMorgan with a trial appearance subpoena?

Thanks very much,

Allison

Allison Stoddart | WilmerHale

7 World Trade Center

250 Greenwich Street

New York, NY 10007 USA

[REDACTED]

From: [REDACTED] <[REDACTED]>

Sent: Friday, October 8, 2021 12:15 PM

To: Stoddart, Allison <[REDACTED]>

Cc: Sahni, Anjan <[REDACTED]> (USANY) <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>

Subject: Re: [EXTERNAL] RE: United States v. Ghislaine Maxwell, 20 Cr. 330 (AJN)

EFTA00040239

EXTERNAL SENDER

Hi Allison,

I'm traveling for work for much of next week, but I'm available for a call anytime on Monday, or at 9 a.m. on Tuesday. I'm also available for a call this afternoon anytime from 4 pm onwards if that's easier.

Thanks.

On Oct 8, 2021, at 11:18 AM, Stoddart, Allison <[REDACTED]> wrote:

Thanks, Alison. Could we find some time early next week to discuss? Are there certain windows that would work on your end?

Thanks,
Allison

Allison Stoddart | WilmerHale

7 World Trade Center
250 Greenwich Street
[REDACTED]

From: [REDACTED] <[REDACTED]>

Sent: Friday, October 8, 2021 10:01 AM

To: Sahni, Anjan <[REDACTED]>; Stoddart, Allison <[REDACTED]>

Cc: [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>

Subject: United States v. Ghislaine Maxwell, 20 Cr. 330 (AJN)

EXTERNAL SENDER

Anjan, Allison,

Hope you're both doing well. Following up on our last conversation, we wanted to send along a few documents in order to facilitate our conversation about identifying an appropriate witness from JP Morgan. Attached is a zip file containing a few draft exhibits. We are still working on finalizing exhibits, but we thought it made sense to start the conversation about this sooner rather than later. Please let us know if you have any questions or if a call would be useful.

Thanks,

[REDACTED]

[REDACTED]

Assistant United States Attorney
Southern District of New York
One Saint Andrew's Plaza

EFTA00040240

New York, NY 10007



EXHIBIT 1

UNITED STATES DISTRICT COURT

for the

Southern District of New York

United States of America)

Ghislainé V. Maxwell)

Case No. 20CR330 (AJN)

Defendant)

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR
OBJECTS IN A CRIMINAL CASE**

To: Jordana Feldman

(Name of person to whom this subpoena is directed)

YOU ARE COMMANDED to produce at the time, date, and place set forth below the following books, papers, documents, data, or other objects:

See Attachment A

Place: United States District Court
Southern District of New York, Courtroom 318
40 Foley Square, New York, NY 10007

Date and Time: 11/29/2021 8:30 am

Certain provisions of Fed. R. Crim. P. 17 are attached, including Rule 17(c)(2), relating to your ability to file a motion to quash or modify the subpoena; Rule 17(d) and (e), which govern service of subpoenas; and Rule 17(g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

(SEAL)

Date: _____

CLERK OF COURT

Signature of Clerk or Deputy Clerk

The name, address, e-mail, and telephone number of the attorney representing (name of party) Ghislainé Maxwell, who requests this subpoena, are:

Jeffrey S. Pagliuca, Haddon, Morgan & Foreman P.C., 150 East 10th Ave., Denver, Colorado 80203, 303.831.7364, jpagliuca@hmflaw.com

Notice to those who use this form to request a subpoena

Before requesting and serving a subpoena pursuant to Fed. R. Crim. P. 17(c), the party seeking the subpoena is advised to consult the rules of practice of the court in which the criminal proceeding is pending to determine whether any local rules or orders establish requirements in connection with the issuance of such a subpoena. If no local rules or orders govern practice under Rule 17(c), counsel should ask the assigned judge whether the court regulates practice under Rule 17(c) to 1) require prior judicial approval for the issuance of the subpoena, either on notice or ex parte; 2) specify where the documents must be returned (e.g., to the court clerk, the chambers of the assigned judge, or counsel's office); and 3) require that counsel who receives produced documents provide them to opposing counsel absent a disclosure obligation under Fed. R. Crim. P. 16.

Please note that Rule 17(c) (attached) provides that a subpoena for the production of certain information about a victim may not be issued unless first approved by separate court order.

Case No. 20CR330 (AJN)

PROOF OF SERVICE

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____
_____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Print

Save As...

Add Attachment

Reset

EFTA00040244

Federal Rule of Criminal Procedure 17 (c), (d), (e), and (g) (Effective 12/1/08)

(c) Producing Documents and Objects.

(1) In General. A subpoena may order the witness to produce any books, papers, documents, data, or other objects the subpoena designates. The court may direct the witness to produce the designated items in court before trial or before they are to be offered in evidence. When the items arrive, the court may permit the parties and their attorneys to inspect all or part of them.

(2) Quashing or Modifying the Subpoena. On motion made promptly, the court may quash or modify the subpoena if compliance would be unreasonable or oppressive.

(3) Subpoena for Personal or Confidential Information About a Victim. After a complaint, indictment, or information is filed, a subpoena requiring the production of personal or confidential information about a victim may be served on a third party only by court order. Before entering the order and unless there are exceptional circumstances, the court must require giving notice to the victim so that the victim can move to quash or modify the subpoena or otherwise object.

(d) Service. A marshal, a deputy marshal, or any nonparty who is at least 18 years old may serve a subpoena. The server must deliver a copy of the subpoena to the witness and must tender to the witness one day's witness-attendance fee and the legal mileage allowance. The server need not tender the attendance fee or mileage allowance when the United States, a federal officer, or a federal agency has requested the subpoena.

(e) Place of Service.

(1) In the United States. A subpoena requiring a witness to attend a hearing or trial may be served at any place within the United States.

(2) In a Foreign Country. If the witness is in a foreign country, 28 U.S.C. § 1783 governs the subpoena's service.

(g) Contempt. The court (other than a magistrate judge) may hold in contempt a witness who, without adequate excuse, disobeys a subpoena issued by a federal court in that district. A magistrate judge may hold in contempt a witness who, without adequate excuse, disobeys a subpoena issued by that magistrate judge as provided in 28 U.S.C. § 636(e).

ATTACHMENT A

DEFINITIONS

1. "You" or "Your" means any owner, shareholder, partner or employee of the Epstein Victim's Compensation Program ("EVCP"), and any former owner, shareholder, partner or employee of the EVCP.
2. "Accusers" or "Accuser" means [REDACTED].
3. Attorneys means legal counsel for any Accuser or the EVCP.
4. "Communication" means all forms of correspondence, including regular mail, email, text message, memorandum, or other written communication of information of any kind.
5. "EVCP Material" refers to any submission to the Epstein Victim's Compensation Program made by an Accuser, including any claims on behalf of persons who have accused Jeffrey Epstein or Ghislaine Maxwell of any misconduct, any releases signed by an Accuser or their Attorneys, and any compensation received by an Accuser.

INSTRUCTIONS

1. Production of documents and items requested herein shall be made in person to United States District Court, Southern District of New York, 40 Foley Square, New York, NY 10007, Courtroom 318.
2. This Request calls for the production of all responsive Documents in Your possession, custody or control without regard to the physical location of such documents.
3. If any Document was in your possession or control, but is no longer, state what disposition was made of said Document, the reason for the disposition, and the date of such disposition.
4. In producing Documents, if the original of any Document cannot be located, a copy shall be produced in lieu thereof, and shall be legible and bound or stapled in the same manner as the original.
5. Any copy of a Document that is not identical shall be considered a separate document.
6. All Documents shall be produced in the same order as they are kept or maintained by You in the ordinary course of business.
7. Responsive electronically stored information (ESI) shall be produced in its native form; that is, in the form in which the information was customarily created, used and stored by the native application employed by the producing party in the ordinary course of business.
8. Defendant does not seek and does not require the production of multiple copies of identical Documents.
9. This Request is deemed to be continuing. If, after producing these Documents, you obtain or

become aware of any further information, Documents, things, or information responsive to this Request, you are required to so state by supplementing your responses and producing such additional Documents to Defendant.

DOCUMENTS OR THINGS TO BE PRODUCED

1. Any and all EVCP Material submitted by each Accuser, not limited to Claim Forms and supporting submissions made by each Accuser;
2. Communications between the EVCP to each of the Accusers and/ or their Attorneys;
3. Copies of any payments to the Accusers and their Attorneys;
4. Any and All Releases executed by the Accusers.

EXHIBIT 1

Independent
Epstein Victims' Compensation Program

PROTOCOL

May 29, 2020

I. PURPOSE AND OVERVIEW

The Epstein Victims' Compensation Program (the "Program") is a voluntary, independent Program that has been established to compensate and resolve the claims of victims-survivors of sexual abuse by Jeffrey Epstein ("Epstein").

The Estate of Jeffrey Epstein (the "Estate") has retained the services of nationally recognized claims administration experts Kenneth R. Feinberg, Camille S. Biros and Jordana H. Feldman to design the Program. Ms. Feldman will also serve as the Administrator of the Program (the "Administrator"). This Protocol reflects input from victims-survivors, their lawyers, other potentially interested parties, and representatives of the Estate.

Through the Program, the Estate wishes to acknowledge the wrongs endured by victims-survivors and offer them an opportunity to voluntarily resolve their individual claims for such sexual abuse.

The Program is governed by the following non-exclusive guiding principles:

- The Program is purely voluntary. It does not affect any rights a Claimant may have unless and until the Claimant accepts the offered compensation and executes a Release. A Claimant may reject the offer of compensation and may stop participating in the Program and withdraw the claim at any time prior to execution of the Release.
- The Program is independent and will in no way be administered, controlled or overseen by the Estate. The Administrator is responsible for all decisions relating to the review, processing and evaluation of individual claims submitted to the Program. The Administrator will have final, binding and exclusive authority to determine Claimant eligibility and the valuation of each eligible individual claim. Decisions of the Administrator made pursuant to this Protocol are not subject to review or modification in any way by the Estate or any other party or entity.
- There is no cap or limitation on the aggregate amount of funds available to compensate all eligible Claimants or on the amount of compensation to be made to each individual Claimant. Each individual claim will be evaluated separately by the Administrator. The Administrator will determine, in her sole and exclusive discretion, issues of eligibility and the amount of compensation and the Estate will pay all eligible claims based on the Administrator's determination.

- All Claimants will be treated with respect, dignity and fairness without regard to race, color, sexual orientation, national origin, religion, gender or disability. To ensure claims will be adjudicated fairly, the Administrator will manage the process so that all Claimants can equally access the Program's claim process. Individuals with disabilities will be given the opportunity to effectively communicate their claims and to request special process accommodations.

The Program is available to all victims-survivors regardless of where they were harmed, when they were harmed, whether the claim is time-barred by the applicable statute of limitations, and whether they have previously filed a lawsuit against or settled with Epstein and/or the Estate.

The exclusive claims period for filing a claim pursuant to this Protocol shall commence on the to-be-determined Effective Date and shall conclude nine (9) months after that date ("Filing Deadline"). All individual claims filed with the Program must be filed within this period.

To complement the Program's resources, the Administrator will, at her discretion and with the consent of the Claimant, consult with Professor Marci A. Hamilton, a nationally recognized sexual abuse expert, leading legal academic and advocate of victims' rights. Ms. Hamilton's role will be to further inform the Administrator and her staff about the dynamics of sexual abuse, common responses to sexual abuse, and the impact of sexual abuse on victims; to serve as a resource for the Administrator in developing or updating policies and procedures; to advise the Administrator regarding sensitivities involved in interactions with victims; and to serve as a referral source for the Administrator in providing post-determination information to claimants who seek guidance, counseling or other services. The Administrator may, at her discretion and with the Claimant's prior written consent, request that Ms. Hamilton review an individual claimant file. The Administrator will determine on a case-by-case basis, in her discretion, the need to anonymize individual claimants' files before sharing them with Ms. Hamilton. As set forth above, the Administrator is solely responsible for all decisions relating to the administration of the Program, including the review, processing, evaluation, and determination of individual claims submitted to the Program.

During the term of the Program, Ms. Hamilton will not meet or speak with a Claimant or her representatives concerning any aspect of the Program without the Administrator present. Ms. Hamilton will maintain in strict confidence and will not disclose outside the Program any information she obtains through her participation in the Program, including individual Claimants' submissions.

II. ELIGIBILITY REQUIREMENTS

A. Eligibility Criteria

The persons eligible to participate in this Program are individuals who allege they were sexually abused by Epstein. In addition, the following criteria apply:

- The claim of sexual abuse must be directed against Epstein.
- An individual whose claim is time-barred by the applicable statute of limitations may participate in the Program provided that other eligibility criteria are met.
- An individual who previously entered into a settlement agreement resolving a claim of sexual abuse against Epstein may participate in the Program provided that other eligibility criteria are met.
- An individual who allegedly assisted Epstein in procuring other victims-survivors may participate in the Program where there is a credible basis to determine that the individual acted under duress as a result of her own sexual abuse by Epstein, provided that other eligibility criteria are met.
- If the Claimant chooses to accept the offered compensation, the Claimant must dismiss with prejudice any existing lawsuits, legal actions or claims filed against the Estate or related entities and/or related individuals. The Claimant must provide proof of such dismissal along with or prior to the signed acceptance of the compensation determination offer letter and executed Release in order to receive payment.

B. Legal Representatives of Claimants

An individual may file a claim on a victim's behalf where that individual has been granted legal authority to act in a representative capacity pursuant to appropriate law. The "Legal Representative" of an individual Claimant shall mean: (1) in the case of a Claimant who is currently a minor, a parent or legal guardian authorized by law to serve as the minor's legal representative; (2) in the case of an incompetent or legally incapacitated Claimant, a person who has been duly appointed as the Claimant's legal representative in accordance with applicable law; (3) in the case of a deceased Claimant, a person who has been duly appointed to act as the personal representative of the Claimant's estate by a court of competent jurisdiction and is authorized to file and compromise a claim; or (4) an attorney authorized to represent the Claimant for purposes of pursuing a claim through this Program.

Legal Representatives must provide proper documentation demonstrating representative capacity. Such proof may include a power of attorney; documentation showing the individual's appointment as guardian or guardian ad litem; documentation showing the individual's appointment as personal representative of the Claimant's estate (such as letters of administration); a copy of a retainer

agreement showing legal representation signed by both the Claimant and the attorney or a signed statement by an adult Claimant and the attorney that a licensed/admitted attorney is acting on her behalf.

III. CLAIMS ADMINISTRATION - SUBMISSION, EVALUATION AND DETERMINATION

A. Claims Submission Process

Individuals who have filed a lawsuit, legal action or claim against Epstein and/or the Estate or have otherwise been identified as a victim of Epstein by their attorney to the Administrator on or before the Effective Date will be sent a Claim Form and other relevant Program information, including Instructions for completion and submission of the Claim Form and a copy of this Protocol. Individuals who have filed a lawsuit need not agree to a stay of litigation or make any other concession in any pending litigation to be eligible to participate in the Program. Likewise, individuals who have not yet filed a lawsuit remain free to file a lawsuit and engage in litigation concurrently with participation in the Program. Individuals must, however, dismiss with prejudice any and all existing lawsuits, legal actions and claims prior to or at the time of acceptance of a compensation determination offer in order to receive payment.

Individuals who have not filed a lawsuit, legal action or claim against Epstein and/or the Estate or have not otherwise been identified as a victim of Epstein by their attorney to the Administrator on or before the Effective Date may register to participate in this Program on the Program's website at www.EpsteinVCP.com. To register, such individuals must complete a questionnaire setting forth their name, contact information, a summary description of the nature of the claim and other requested information. Upon registration, the Administrator will perform a preliminary review to consider if the individual is eligible to participate in the Program. If the Administrator deems that the individual is eligible to participate in the Program, she will then send that individual a Claim Form and other relevant Program information.

Note: The fact that an individual is sent a Claim Form and other relevant Program information indicates that the Administrator has determined that such individual is eligible to participate in the Program. It does not indicate that the Administrator has determined that such individual is eligible to receive compensation. That determination is made only after a Claim Form and all required documentation has been submitted and evaluated by the Administrator.

Registrations for individuals who have not filed a lawsuit, legal action or claim against Epstein and/or the Estate or have not otherwise been identified as a victim of Jeffrey Epstein by their attorney to the Administrator on or before the Effective Date will be accepted by the Administrator from the Effective Date through a date that is 45 days prior to the Filing Deadline ("Registration Deadline"). It is important to note that the Registration Deadline is separate from, and precedes, the Filing Deadline. As explained above, all claims must be filed by the Filing Deadline.

All Claim Forms must be completed to the best of a Claimant's ability and filed no later than the Filing Deadline. Claim Forms should be uploaded to the Program website at www.EpsteinVCP.com, or mailed via overnight courier (a pre-paid courier voucher will be included with each packet) to the Administrator at the following address:

Epstein Victims' Compensation Program
Attn: Jordana H. Feldman, Administrator
1050 Connecticut Ave., NW
#65488
Washington, D.C. 20035

Claimants are invited to provide documentation identified in the Claim Form, and any other corroborating or supporting information sufficient to substantiate the claim, satisfy eligibility requirements, and allow the Administrator to review, process and evaluate the claim. If the claim is being presented by a Legal Representative, then the Legal Representative will be responsible for submitting the necessary documentation relating to the represented Claimant.

Additional documentation may be requested at the discretion of the Administrator. Both the Claimant and the Estate will be afforded the opportunity to submit to the Administrator any information deemed relevant to the Administrator's evaluation and determination of the claim before the Administrator's final disposition of the claim.

If a Claimant submits an incomplete or deficient claim, the Administrator will notify the Claimant, explain the additional information that is needed, and work with the Claimant or the Claimant's Legal Representative (where applicable) to assist in submitting a complete claim.

B. Claims Evaluation and Determination

Claims will be evaluated in the order in which they are received, with the Administrator evaluating each submitted individual claim in a prompt and fair manner. Claims will only be determined once all required documentation has been submitted to the Administrator, with due consideration granted to Claimant's good faith explanations for delays and/or absence of documentation.

1. *Factors Considered in Evaluating Claims*

As to each individual claim, the Administrator will determine, in her sole discretion based upon all of the information available, whether the allegations of sexual abuse are credible. The Administrator will consider appropriate factors and corroborative support, including but not limited to:

- The level of documentation, corroboration or other circumstantial evidence regarding the nature and extent of the abuse, the frequency, location and other details of the abuse, and the age of the victim at the time of the abuse. Non-exhaustive examples of such evidence include (i) medical or psychiatric counseling/therapy records relevant to the abuse, and (ii) contemporaneous written notification or other correspondence (e.g., letters, emails) of the abuse by the Claimant to law enforcement authorities, parents, friends or others. The

Administrator acknowledges that some Claimants may not be able to provide any documentation to corroborate their Claim based on the nature and circumstances of Epstein's conduct. If a Claimant's written and oral presentation is deemed to be credible by the Administrator, the Claimant may still be eligible for compensation under the Program.

- Whether there exists any information and/or pertinent findings offered by the appropriate Office of the District Attorney, United States Attorney's Office, or other law enforcement agency.
- Whether the Administrator finds the claims of the individual to be credible after complete review of all relevant documentation and other evidence provided by the Claimant and the Estate.

As to each individual claim, the Administrator will determine, in her sole discretion based upon all of the information available, the amount of compensation that should be offered to each eligible Claimant. The Administrator will consider appropriate factors and corroborative support, including but not limited to:

- The nature, duration and extent of the sexual abuse suffered by the Claimant.
- The age of the Claimant at the time of the sexual abuse.
- The nature and extent of the Claimant's physical or psychological damage resulting from the sexual abuse, and the effect of the sexual abuse on the Claimant.
- The credibility of the claim based upon all of the facts and circumstances, supporting documentation and corroborating evidence.
- Whether the Claimant previously entered into a settlement agreement with Epstein and received a payment pursuant to such agreement.

The Administrator will confidentially send the Claimant a compensation determination offer letter including the following: (1) the Administrator's eligibility decision regarding the claim; (2) the amount of compensation offered; (3) a Release to be signed by the Claimant if the Claimant accepts the offered compensation; and (4) a Payment Option Form. The Administrator's offer shall be valid for 60 days from the date of the compensation determination offer letter.

The Administrator's determinations in this Program will not be binding on any potential criminal investigation involving Claimant's claims.

2. Opportunities to be Heard

The Claimant will be afforded an opportunity to be heard, either before or after the Administrator renders her determination. Upon request by the Claimant, the Administrator will be available to meet in person (as practicable in light of the COVID-19 pandemic), by video conference, or by teleconference to

further discuss the claim. These meetings are completely optional and voluntary. Requests to meet with the Administrator should be sent by email to ClaimantServices@EpsteinVCP.com and will be scheduled at a mutually convenient time and location. The Administrator may also request a meeting with a Claimant or her Legal Representative at a reasonable mutually convenient time and location, though the Claimant is not obligated to attend any such meeting.

3. Release

By submitting a claim to the Program, a Claimant is seeking to resolve all claims relating to allegations of sexual abuse against Epstein and/or the Estate, and related entities and individuals as set forth in the Release. If a Claimant chooses to accept the offer of compensation pursuant to the Program, the Claimant will be required to sign and execute a full Release, in a form satisfactory to the Estate, of all past and future claims (including *lis pendens*, writs of attachment, etc.) relating to such allegations of sexual abuse against the Estate, related entities and/or related individuals. A Claimant may reject the offer of compensation and may stop participating in the Program and withdraw the claim at any time prior to the execution of the Release.

The Release will waive any rights the Claimant and her heirs, descendants, legatees or beneficiaries may have to assert any claims relating to allegations of sexual abuse against the Estate, related entities and/or related individuals, to file an individual legal action relating to such allegations, or to participate in any civil legal action associated with such allegations, except as a witness. However, the Release will not operate to preclude or limit the Claimant's ability to report and discuss allegations of sexual abuse with law enforcement officials or anyone else. In other words, the Release will not impose any rules of confidentiality on claimants, who are expressly permitted to discuss their allegations without restriction, should they choose.

Before signing a Release, the Claimant must consult with an attorney selected by the Claimant. If the Claimant is not represented by an attorney, the Program will provide an attorney to provide free legal counseling to the Claimant for the sole purpose of advising the Claimant concerning the language and binding nature of the Release.

No one affiliated with the Program will provide tax or legal advice to those receiving payments under the Program. Claimants are urged to consult with a tax advisor concerning any questions regarding tax liability for payments pursuant to the Program.

4. Payments

Upon the Claimant's acceptance of the Administrator's determination, the Administrator's receipt of the Claimant's executed Release and, where applicable, dismissal with prejudice of any existing lawsuit, legal actions or claims against the Estate or related entities and/or related individuals, the Administrator will initiate payment by check or electronic funds transfer to each eligible Claimant as directed by the Claimant. Checks will be sent to Claimants via overnight courier service. All

payments made under the Program shall be for a Claimant's physical injuries, physical sickness and resulting emotional distress within the meaning of Section 104(a) of the Internal Revenue Code.

C. Program Integrity

For the purpose of protecting both the integrity of the Program and financial resources for eligible Claimants, the Administrator will institute all necessary measures to prevent payment of fraudulent claims, including taking steps to verify claims and analyze submissions for inconsistencies, irregularities or duplication.

Each Claimant who signs the Claim Form at the time of submission certifies that the information provided in the Claim Form is true and accurate to the best of the Claimant's knowledge, and that the Claimant understands that false statements or claims made in connection with such submission may result in fines, imprisonment and/or any other remedy available by law. Claims that appear to be potentially fraudulent or to contain information known by the Claimant to be false when made will be forwarded to federal, state or local law enforcement agencies and/or the appropriate Office of the District Attorney and/or United States Attorney's Office for possible investigation and prosecution.

D. Confidentiality/Privacy

The Program is confidential.¹ By filing a claim with the Program, the Claimant or her Legal Representative (where applicable) agrees that information submitted by the Claimant pursuant to the Program will be used and/or disclosed by the Administrator and her designees only for the following purposes:

- 1) Processing and evaluating the Claimant's claim;
- 2) Administering the Program and other Program-related work; and
- 3) Reports to law enforcement where appropriate, related to potentially fraudulent claims.

When documents or other information maintained or submitted by the Estate become part of a Claimant's file for purposes of the Program, such materials will be reviewed by the Administrator to assist in processing and evaluating the claim, but will otherwise remain confidential. No information provided by Claimants will be provided to the Estate except for the Claimant's name and the date(s) and location(s) of the alleged abuse, for the sole purpose of processing and evaluating the claim and, for purposes of the Release, the names of any other individual(s) to whom or by whom the Claimant alleges she was trafficked or sexually abused. The Estate has agreed that no information obtained solely through the Program will be disclosed publicly or used by the Estate in defending itself from any claim, regardless of forum. The Program's files are not available for inspection, review or copying by the Estate or the Claimant or her representatives during or after the Program, and all pertinent

¹ All parties agree that they are using the services of a third-party administrator to help reach a resolution of individual claims of sexual abuse, and that this Program is entitled to confidentiality, privileges (mediation, settlement and all other pertinent privileges), and protection from disclosure under applicable law.

mediation privileges, settlement privileges and other privileges apply.

To protect the privacy of Claimants participating in the Program, all personal information provided by the Claimant during this process will be returned or destroyed within one year after the conclusion of the Program.

Individual Claimants are not bound through the Program by any rules of confidentiality. Claimants may, at their sole and voluntary option, disclose information in their possession regarding their claim, their compensation and their experience with the Program.

All confidentiality requirements are subject to law, regulation and judicial process.

E. Reporting

The Administrator shall, on a monthly basis, confidentially provide reports regarding the number and total value of claims paid each month to the Probate Court of the United States Virgin Islands and the Attorney General of the United States Virgin Islands. Such reports will report on an aggregate level only. No individual Claimant information will be published or disclosed in a way that compromises Claimant confidentiality.

From: "[REDACTED]" <[REDACTED]>
To: "Stein, Gary" <[REDACTED]>
Cc: "[REDACTED]" <[REDACTED]>, "[REDACTED] (USANYS)" <[REDACTED]>, "[REDACTED]" <[REDACTED]>
Subject: Re: [EXTERNAL] RE: Professional Children's School
Date: Tue, 16 Nov 2021 15:44:49 +0000

That works great. Thanks for making the time work, and enjoy the game tonight.

[REDACTED]

On Nov 16, 2021, at 9:41 AM, Stein, Gary <[REDACTED]> wrote:

[REDACTED]

[REDACTED] and I are available on Thursday but he has a hard stop at 7:30 pm. OK with you?

Gary Stein

Partner

[REDACTED] office
[REDACTED] mobile

my pronouns: he/him/his

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From: [REDACTED] <[REDACTED]>
Sent: Monday, November 15, 2021 3:25 PM
To: Stein, Gary <[REDACTED]>
Cc: [REDACTED] <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] <[REDACTED]>
Subject: RE: Professional Children's School

5:30 is our preference if that's possible. There's some chance we could start earlier on Tuesday, but we won't really know for another couple days.

Thanks,

[REDACTED]

From: Stein, Gary <[REDACTED]>
Sent: Monday, November 15, 2021 12:51 PM
To: [REDACTED] <[REDACTED]>
Cc: [REDACTED] <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] <[REDACTED]>
Subject: [EXTERNAL] Re: Professional Children's School

Same start time of 5:30 pm or can you start earlier on Thursday?

Gary Stein
Partner

[REDACTED]
[REDACTED]

Schulte Roth & Zabel LLP

[REDACTED]
[REDACTED] | [REDACTED] fax

On Nov 15, 2021, at 12:43 PM, [REDACTED] <[REDACTED]> wrote:

Hey Gary,

I don't think we can start safely before 5:30, and that cuts it a little tight. How is Thursday evening instead?

Thanks,

[REDACTED]

From: Stein, Gary <[REDACTED]>

Sent: Monday, November 15, 2021 8:52 AM

To: [REDACTED] <[REDACTED]>

Cc: [REDACTED] <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>;

[REDACTED] <[REDACTED]>

Subject: [EXTERNAL] Re: Professional Children's School

Hey [REDACTED],

No problem. What time tomorrow do you have in mind? I have to leave around 6:30 pm (for a Rangers game). If that doesn't work we'll find another time this week.

Best regards,
Gary

Gary Stein
Partner

[REDACTED]
[REDACTED]

Schulte Roth & Zabel LLP

[REDACTED]
[REDACTED] | [REDACTED] fax

On Nov 15, 2021, at 8:20 AM, [REDACTED] <[REDACTED]> wrote:

Hi Gary,

I hope you had a nice weekend. I should have realized, we are in court tomorrow afternoon. Could you and Mr. [REDACTED] do tomorrow evening or later in the week? Apologies that this is so difficult to schedule on our end.

Thanks,
[REDACTED]

From: Stein, Gary <[REDACTED]>
Sent: Sunday, November 7, 2021 10:04 AM
To: [REDACTED] <[REDACTED]>
Cc: [REDACTED] <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] <[REDACTED]>
Subject: [EXTERNAL] Re: Professional Children's School

[REDACTED]
The afternoon of 11/16 should work.

Best regards,
Gary

Gary Stein
Partner
[REDACTED]
[REDACTED]

Schulte Roth & Zabel LLP
[REDACTED]
[REDACTED] | [REDACTED] fax

On Nov 6, 2021, at 11:49 PM, [REDACTED] <[REDACTED]> wrote:

Hi Gary,

I hope all's well. With apologies for the short notice, would it be all right if we moved our prep back? I think the 12th and 15th are bad on your end, so how about the 16th?

Thanks,
[REDACTED]

From: Stein, Gary <[REDACTED]>
Sent: Friday, October 29, 2021 6:13 PM
To: [REDACTED] <[REDACTED]>
Cc: [REDACTED] <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] <[REDACTED]>
Subject: [EXTERNAL] RE: Professional Children's School

Good with us.

Gary Stein

Partner

office
mobile

my pronouns: he/him/his

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From: [REDACTED] <[REDACTED]>
Sent: Friday, October 29, 2021 3:27 PM
To: Stein, Gary <[REDACTED]>
Cc: [REDACTED] <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] <[REDACTED]>
Subject: RE: Professional Children's School

Thanks, Gary! How about 2:00 on November 8? If that works, I'll circulate a Webex link. I'll plan to set aside 2 hours, though I expect our conversation will be quite a bit shorter.

Thanks,

From: Stein, Gary <[REDACTED]>
Sent: Friday, October 29, 2021 2:46 PM
To: [REDACTED] <[REDACTED]>
Cc: [REDACTED] <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] <[REDACTED]>
Subject: [EXTERNAL] RE: Professional Children's School

[REDACTED]
[REDACTED] is not available 11/9, 11/12 or 11/15, but most other times between now and then should work. Please let me know when you'd like to set this up for.

Best regards,
Gary

Gary Stein

Partner

office
mobile

my pronouns: he/him/his

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From: [REDACTED] <[REDACTED]>
Sent: Friday, October 22, 2021 4:12 PM
To: Stein, Gary <[REDACTED]>
Cc: [REDACTED] <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] <[REDACTED]>
Subject: RE: Professional Children's School

Hi Gary,

EFTA00040261

Thanks again for the call this afternoon. Attached is the document we're planning to show [REDACTED]

Have a nice weekend,
[REDACTED]

From: Stein, Gary <[REDACTED]>
Sent: Tuesday, October 19, 2021 4:08 PM
To: [REDACTED] <[REDACTED]>
Cc: [REDACTED] <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>;
[REDACTED] <[REDACTED]>
Subject: [EXTERNAL] RE: Professional Children's School

That's good. Thanks [REDACTED].

Gary Stein
Partner
[REDACTED] office
[REDACTED] mobile
my pronouns: he/him/his

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www.srz.com

From: [REDACTED] <[REDACTED]>
Sent: Tuesday, October 19, 2021 3:34 PM
To: Stein, Gary <[REDACTED]>
Cc: [REDACTED] <[REDACTED]>; [REDACTED] (USANYS)
<[REDACTED]>; [REDACTED] <[REDACTED]>
Subject: RE: Professional Children's School

Great. Let's say 4:00 on Friday?

We can use this dial-in:

[REDACTED]
PIN: [REDACTED]

From: Stein, Gary <[REDACTED]>
Sent: Tuesday, October 19, 2021 3:33 PM
To: [REDACTED] <[REDACTED]>
Cc: [REDACTED] <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>;
[REDACTED] <[REDACTED]>
Subject: [EXTERNAL] RE: Professional Children's School

Sure

Gary Stein
Partner
[REDACTED] office
[REDACTED] mobile
my pronouns: he/him/his

Schulte Roth & Zabel LLP
www.srz.com

From: [REDACTED] <[REDACTED]>
Sent: Tuesday, October 19, 2021 3:32 PM
To: Stein, Gary <[REDACTED]>
Cc: [REDACTED] <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] <[REDACTED]>
Subject: RE: Professional Children's School

Thanks, Gary. How about 4:00 on one of those days?

[REDACTED]

From: Stein, Gary <[REDACTED]>
Sent: Tuesday, October 19, 2021 12:07 PM
To: [REDACTED] <[REDACTED]>
Cc: [REDACTED] <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] <[REDACTED]>
Subject: [EXTERNAL] RE: Professional Children's School

Thursday or Friday would be best for me.

Gary Stein
Partner
[REDACTED] office
[REDACTED] mobile
my pronouns: he/him/his

Schulte Roth & Zabel LLP
www.srz.com

From: [REDACTED] <[REDACTED]>
Sent: Tuesday, October 19, 2021 11:17 AM
To: Stein, Gary <[REDACTED]>
Cc: [REDACTED] <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] <[REDACTED]>
Subject: RE: Professional Children's School

Hi Gary,

I hope all's well. Do you have a few minutes to talk sometime this week? We'd like to check in, now that the trial is coming up soon.

Thanks,
[REDACTED]

From: [REDACTED] <[REDACTED]>
Sent: Monday, April 26, 2021 9:38 AM
To: Stein, Gary <[REDACTED]>
Cc: [REDACTED] <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] <[REDACTED]>
Subject: RE: Professional Children's School

Hi Gary,

Thanks for speaking earlier this month. Have you been able to locate a records custodian? Not time sensitive if you're still working on it, but I wanted to check in.

Thanks very much,

[REDACTED]

From: Stein, Gary <[REDACTED]>

Sent: Wednesday, April 7, 2021 1:56 PM

To: [REDACTED] <[REDACTED]>

Cc: [REDACTED] <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>

Subject: RE: Professional Children's School

Thanks [REDACTED]. I too am pretty wide open tomorrow afternoon. Want to say 2 pm?

Gary Stein

Partner

[REDACTED] office
[REDACTED] mobile

my pronouns: he/him/his

Schulte Roth & Zabel LLP
www.srz.com

From: [REDACTED] <[REDACTED]>

Sent: Wednesday, April 7, 2021 1:33 PM

To: Stein, Gary <[REDACTED]>

Cc: [REDACTED] <[REDACTED]>; [REDACTED] (USANYS)

<[REDACTED]>

Subject: Re: Professional Children's School

Not a problem— what time works for you? I'm fairly open tomorrow afternoon.

On Apr 7, 2021, at 1:24 PM, Stein, Gary <[REDACTED]> wrote:

Apologies – can we move this call to Thursday afternoon?

Gary Stein

Partner

[REDACTED] office
[REDACTED] mobile

my pronouns: he/him/his

Schulte Roth & Zabel LLP
www.srz.com

From: [REDACTED] <[REDACTED]>

Sent: Tuesday, April 6, 2021 5:01 PM

To: Stein, Gary <[REDACTED]>

Cc: [REDACTED] <[REDACTED]>; [REDACTED] (USANYS)

<[REDACTED]>

Subject: RE: Professional Children's School

Thanks very much. Let's plan for 9:30 on Thursday morning, if that works for you. We can use this conference line:

Dial-in: [REDACTED]
Access code: 1997387850

From: Stein, Gary <[REDACTED]>
Sent: Tuesday, April 6, 2021 4:39 PM
To: [REDACTED] <[REDACTED]>
Cc: Sullivan, Elizabeth <[REDACTED]>; [REDACTED] <[REDACTED]>;
[REDACTED] (USANYS) <[REDACTED]>
Subject: RE: Professional Children's School

Sure. Wednesday afternoon (other than 3 to 4 pm) or Thursday morning?

Gary Stein

Partner

[REDACTED] office
[REDACTED] mobile
my pronouns: he/him/his

Schulte Roth & Zabel LLP
www.srz.com

From: [REDACTED] <[REDACTED]>
Sent: Tuesday, April 6, 2021 1:03 PM
To: Stein, Gary <[REDACTED]>
Cc: Sullivan, Elizabeth <[REDACTED]>; [REDACTED] <[REDACTED]>;
[REDACTED] (USANYS) <[REDACTED]>
Subject: RE: Professional Children's School

Hi Gary,

Hope you're doing well. Are you available for a brief call sometime this week? We'd like to follow up with you about this matter.

Thanks very much,

[REDACTED]

[REDACTED]
Assistant United States Attorney
Southern District of New York
[REDACTED]
New York, NY 10007
[REDACTED]

From: Stein, Gary <[REDACTED]>
Sent: Saturday, February 22, 2020 11:11 PM
To: [REDACTED] <[REDACTED]>
Cc: Sullivan, Elizabeth <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED]
[REDACTED] <[REDACTED]>
Subject: Re: Professional Children's School

I'll let you know.

Gary Stein
Partner

Schulte Roth & Zabel LLP

| fax

On Feb 22, 2020, at 11:05 PM, <> wrote:

-CAUTION: EXTERNAL EMAIL

Gary,

I got your voicemail the other day, thank you – thanks for checking again on the possibility of any records relating to tuition payments, etc. The one follow-up question we have, which I think was not covered by the initial subpoena, is whether PCS currently has any records of third-party payments, donations, sponsored scholarships, or other similar financial transactions in the period of 1997 to 2000? If – similar to student financial records – those are no longer available, that would be helpful to know; alternatively, if they are (or might be) available, we can send an updated subpoena asking for any such records relating to Jeffrey Epstein. Please let us know?

thanks,

Assistant U.S. Attorney
Southern District of New York

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1 the aspects of the motion we filed, and I think it's a lot for
2 the Court to have to deal with, quite frankly, and I know the
3 Court is going to try and do the best it can with the
4 situation, but I don't think it's tenable and -- I don't ask
5 for mistrials easily, I have probably asked for four in my
6 entire career, I don't see a way out of this problem.

7 (Pause.)

8 THE COURT: All right, I'm going to deny the
9 defendant's motion for a mistrial. Any issues caused by a
10 witness referring to certain individuals by their first name
11 only and by asking the Government if they may use last names
12 of certain other individuals can be cured by a jury
13 instruction, which I will give. Going forward, the Government
14 shall provide the defendant and each witness, including the
15 current witness, with a list of the individuals whose identity
16 should be protected from the public and the press, that way
17 each witness can refer to the list rather than asking the
18 Government whether a particular individual's identity is
19 protected.

20 You don't have a proposed jury instruction.

21  Not yet, Your Honor.

22 THE COURT: I have one.

23 To the jurors: You may have noticed during
24 yesterday's testimony that the witness used first names of
25 certain individuals. That is because the names of certain

1 alleged victims are being withheld from the public and the
2 press to protect the privacy of those individuals. I have
3 therefore instructed the parties to refer to those individuals
4 by their first names only; however, those full names are known
5 to the Government, the defendant, and to the Court.

6 You may also have noticed that the witness was
7 asking the Government whether she should say the last names of
8 certain individuals. Going forward, the witnesses will
9 receive a list of the individuals whose last names are to be
10 protected to which they may refer while testifying.

11 Anything else you want me to put in there?

12 [REDACTED] Not from the Government Your Honor.

13 THE COURT: You object?

14 MR. AGNIFILO: I do, Judge.

15 THE COURT: Your objection is noted.

16 Also, I'm going to direct that the parties shall not
17 make any speaking objections. If the basis for an objection
18 is not apparent, the parties may request a sidebar.

19 MR. AGNIFILO: Very good. Thank you, Judge.

20 THE COURT: Okay, what else?

21 [REDACTED] Nothing else from the Government, but we
22 would just ask for five minutes to make sure that the list is
23 correct for the current witness.

24 THE COURT: All right, we'll take a five-minute
25 break.

From:

To:

Subject: FW: 20cr330, US v. Maxwell

Date: Thu, 11 Nov 2021 02:47:07 +0000

Attachments: 20cr330_Order_11.10.21.pdf

She gave us until Friday for CC statements and EX 52!!!! I can finally sleep!

From: Nathan NYSD Chambers <[REDACTED]>

Sent: Wednesday, November 10, 2021 9:45 PM

To: Jeff Pagliuca [REDACTED] Laura Menninger [REDACTED]

[REDACTED] [REDACTED] <[REDACTED]>; [REDACTED]
[REDACTED] <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>; [REDACTED]
<[REDACTED]>

Subject: 20cr330, US v. Maxwell

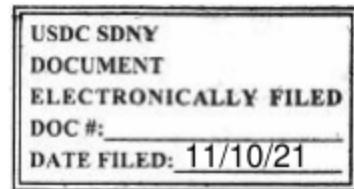
Counsel:

Judge Nathan has granted the parties additional time on two sets of supplemental briefing. Please see the attached order, which will be docketed tomorrow morning.

Sincerely,

Chambers of the Hon. Alison J. Nathan

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



United States of America,

—v—

Ghislaine Maxwell,

Defendant.

20-CR-330 (AJN)

ORDER

ALISON J. NATHAN, District Judge:

The Court hereby revises the schedule for the supplemental briefing as to Defendant's first and seventh motions *in limine*, which was previously set at the November 1, 2021 conference, as follows:

- Government submission due Friday, November 12, 2021
- Defense submission due Monday, November 15, 2021

At today's conference, the parties inquired about the start time for voir dire on November 16, 2021. The parties are ORDERED to appear at **8:30 a.m. on November 16, 2021** in Courtroom 518 of the United States District Court for the Southern District of New York, Thurgood Marshall U.S. Courthouse at 40 Foley Square, New York, New York, for the start of voir dire.

SO ORDERED.

Dated: November 10, 2021
New York, New York

A handwritten signature in black ink, appearing to read "Alison J. Nathan".

ALISON J. NATHAN
United States District Judge

From: "Stoddart, Allison" <Allison.Stoddart@wilmerhale.com>

To: "[REDACTED]" <[REDACTED]>

Cc: "Sahni, Anjan" <Anjan.Sahni@wilmerhale.com>, "[REDACTED] (USANYS)" <[REDACTED]>, "[REDACTED]" <[REDACTED]>, "[REDACTED]" <[REDACTED]>

Subject: RE: [EXTERNAL] RE: United States v. Ghislaine Maxwell, 20 Cr. 330 (AJN)

Date: Thu, 11 Nov 2021 01:35:21 +0000

Hi [REDACTED],

Apologies for not responding sooner. I am still trying to confirm timing, but looking at next week, not tomorrow.

Thanks,
Allison

From: [REDACTED] <[REDACTED]>

Sent: Wednesday, November 10, 2021 7:48 PM

To: Stoddart, Allison <Allison.Stoddart@wilmerhale.com>

Cc: Sahni, Anjan <Anjan.Sahni@wilmerhale.com>; [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>

Subject: RE: [EXTERNAL] RE: United States v. Ghislaine Maxwell, 20 Cr. 330 (AJN)

EXTERNAL SENDER

Hi Allison,

Just checking in on timing, in case we're meeting tomorrow. If not, no worries, next week is fine.

Thanks,

[REDACTED]

From: Stoddart, Allison <Allison.Stoddart@wilmerhale.com>

Sent: Tuesday, November 9, 2021 8:43 PM

To: [REDACTED] <[REDACTED]>

Cc: Sahni, Anjan <Anjan.Sahni@wilmerhale.com>; [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>

Subject: RE: [EXTERNAL] RE: United States v. Ghislaine Maxwell, 20 Cr. 330 (AJN)

Thanks, [REDACTED]. I'll check and get back to you.

Allison

From: [REDACTED] <[REDACTED]>

Sent: Tuesday, November 9, 2021 8:07 PM

To: Stoddart, Allison <Allison.Stoddart@wilmerhale.com>

Cc: Sahni, Anjan <Anjan.Sahni@wilmerhale.com>; [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>

Subject: Re: [EXTERNAL] RE: United States v. Ghislaine Maxwell, 20 Cr. 330 (AJN)

EXTERNAL SENDER

Are there times on Thursday afternoon or evening that would work? I can move a few things around if he is available. Otherwise, I'm available anytime next week in the the morning from 7:30-8:30, or in the evening from 5:30 p.m. onwards, or anytime on the weekend. Thanks very much for your help arranging the meeting.

On Nov 9, 2021, at 7:23 PM, Stoddart, Allison <Allison.Stoddart@wilmerhale.com> wrote:

Thanks, [REDACTED]. Pat is traveling on Friday and Monday unfortunately. I know jury selection is scheduled to be underway next week, but if tomorrow doesn't work, would there be times next week that might?

Thanks,
Allison

From: [REDACTED] <[REDACTED]>

Sent: Tuesday, November 9, 2021 6:32 PM

To: Stoddart, Allison <Allison.Stoddart@wilmerhale.com>

Cc: Sahni, Anjan <Anjan.Sahni@wilmerhale.com>; [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>

Subject: RE: [EXTERNAL] RE: United States v. Ghislaine Maxwell, 20 Cr. 330 (AJN)

EXTERNAL SENDER

Hi Allison,

Thanks very much. We'll be in court most of the day for a hearing tomorrow, but is there a time on Friday that would work?

Thanks,

[REDACTED]

From: Stoddart, Allison <Allison.Stoddart@wilmerhale.com>

Sent: Tuesday, November 9, 2021 3:50 PM

To: [REDACTED] <[REDACTED]>

Cc: Sahni, Anjan <Anjan.Sahni@wilmerhale.com>; [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>

Subject: RE: [EXTERNAL] RE: United States v. Ghislaine Maxwell, 20 Cr. 330 (AJN)

Hi [REDACTED],

When we last spoke, we discussed setting up a call with your team and Pat McHugh. Would tomorrow afternoon work for that call?

Thanks very much,
Allison

EFTA00040274

From: [REDACTED] <[REDACTED]>

Sent: Wednesday, October 27, 2021 9:02 AM

To: Stoddart, Allison <Allison.Stoddart@wilmerhale.com>

Cc: Sahni, Anjan <Anjan.Sahni@wilmerhale.com>; [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>

Subject: RE: [EXTERNAL] RE: United States v. Ghislaine Maxwell, 20 Cr. 330 (AJN)

EXTERNAL SENDER

Hi Allison,

Thanks— would 3 p.m. work for a call today?

From: Stoddart, Allison <Allison.Stoddart@wilmerhale.com>

Sent: Wednesday, October 27, 2021 7:48 AM

To: [REDACTED] <[REDACTED]>

Cc: Sahni, Anjan <Anjan.Sahni@wilmerhale.com>; [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>

Subject: RE: [EXTERNAL] RE: United States v. Ghislaine Maxwell, 20 Cr. 330 (AJN)

Hi [REDACTED],

We wanted to provide an update on the trial witness topic. Do you have any time this afternoon or tomorrow for a brief call?

Thanks,
Allison

From: Stoddart, Allison

Sent: Monday, October 18, 2021 9:05 PM

To: [REDACTED] <[REDACTED]>

Cc: Sahni, Anjan <Anjan.Sahni@wilmerhale.com>; [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>

Subject: RE: [EXTERNAL] RE: United States v. Ghislaine Maxwell, 20 Cr. 330 (AJN)

Great. Thanks, [REDACTED]. Appreciate it.

Allison

From: [REDACTED] <[REDACTED]>

Sent: Monday, October 18, 2021 8:58 PM

To: Stoddart, Allison <Allison.Stoddart@wilmerhale.com>

Cc: Sahni, Anjan <Anjan.Sahni@wilmerhale.com>; [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>

Subject: RE: [EXTERNAL] RE: United States v. Ghislaine Maxwell, 20 Cr. 330 (AJN)

EXTERNAL SENDER

Hi Allison,

Thanks, that's not a problem. I'm attaching a broadly worded subpoena to the bank, but please let me know if you'd like me to direct this more specifically to a particular entity or officer.

Thanks,

[REDACTED]

From: Stoddart, Allison <Allison.Stoddart@wilmerhale.com>

Sent: Monday, October 18, 2021 8:57 AM

To: [REDACTED] <[REDACTED]>

Cc: Sahni, Anjan <Anjan.Sahni@wilmerhale.com>; [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>

Subject: RE: [EXTERNAL] RE: United States v. Ghislaine Maxwell, 20 Cr. 330 (AJN)

[REDACTED], Maurene, Lara,

Following up on our last discussion, JPMorgan is working on identifying a witness for trial. Are you able to provide JPMorgan with a trial appearance subpoena?

Thanks very much,

Allison

Allison Stoddart | WilmerHale

7 World Trade Center

250 Greenwich Street

New York, NY 10007 USA

+1 212 295 6401 (t)

allison.stoddart@wilmerhale.com

From: [REDACTED] <[REDACTED]>

Sent: Friday, October 8, 2021 12:15 PM

To: Stoddart, Allison <Allison.Stoddart@wilmerhale.com>

Cc: Sahni, Anjan <Anjan.Sahni@wilmerhale.com>; [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>

Subject: Re: [EXTERNAL] RE: United States v. Ghislaine Maxwell, 20 Cr. 330 (AJN)

EXTERNAL SENDER

Hi Allison,

I'm traveling for work for much of next week, but I'm available for a call anytime on Monday, or at 9 a.m. on Tuesday. I'm also available for a call this afternoon anytime from 4 pm onwards if that's easier.

Thanks.

On Oct 8, 2021, at 11:18 AM, Stoddart, Allison <Allison.Stoddart@wilmerhale.com> wrote:

Thanks, [REDACTED]. Could we find some time early next week to discuss? Are there certain windows that would work on your end?

Thanks,
Allison

Allison Stoddart | WilmerHale

7 World Trade Center
250 Greenwich Street
New York, NY 10007 USA
+1 212 295 6401 (t)
allison.stoddart@wilmerhale.com

From: [REDACTED] <[REDACTED]>
Sent: Friday, October 8, 2021 10:01 AM
To: Sahni, Anjan <Anjan.Sahni@wilmerhale.com>; Stoddart, Allison <Allison.Stoddart@wilmerhale.com>
Cc: [REDACTED] (USANYS) <[REDACTED]>; [REDACTED]
<[REDACTED]>; [REDACTED] <[REDACTED]>
Subject: United States v. Ghislaine Maxwell, 20 Cr. 330 (AJN)

EXTERNAL SENDER

Anjan, Allison,

Hope you're both doing well. Following up on our last conversation, we wanted to send along a few documents in order to facilitate our conversation about identifying an appropriate witness from JP Morgan. Attached is a zip file containing a few draft exhibits. We are still working on finalizing exhibits, but we thought it made sense to start the conversation about this sooner rather than later. Please let us know if you have any questions or if a call would be useful.

Thanks,

[REDACTED]

[REDACTED]

Assistant United States Attorney
Southern District of New York
One Saint Andrew's Plaza
New York, NY 10007
[REDACTED]



FEDERAL BUREAU OF INVESTIGATION

Date of entry 11/11/2021

JANUSZ BANASIAK (BANASIAK), date of birth (DOB) [REDACTED], was interviewed at [REDACTED], West Palm Beach FL. Present for this interview was Assistant United States Attorney [REDACTED] along with Special Agent [REDACTED] and Detective [REDACTED]. After being advised of the identity of the above listed individual and the nature of the interview, BANASIAK provided the following information:

BANASIAK wants to make correction on a previous statement he made about the phone book with black cover. He states it's not black, it's maybe silver or metal square on the front and back. He had previously mentioned that it was black because he remembers people saying someone was trying to sell the black book. The pages were in between the metal squares.

In 1980 BANASIAK moved to the United States. He first lived in New York. Then he moved to Virginia to work for Seagrams. BANASIAK then went back to New York to apply for jobs. He moved to Brooklyn and was living with a friend.

BANASIAK applied for a job with JEFFREY EPSTEIN through an employment agency. BANASIAK got a call about the job and then he interviewed with GHISLAINE MAXWELL. That interview was in MAXWELL's New York house. This house was between Lexington Avenue and Park Avenue. It was a regular townhouse. Her office was on the first floor. The interview was about 30 minutes. MAXWELL asked BANASIAK where he worked before. MAXWELL tells BANASIAK that he will next be interviewing with EPSTEIN.

BANASIAK then interviewed with EPSTEIN about 2-3 days later. He interviewed with EPSTEIN in his office on Madison Avenue. It was about a 20 minute interview. They had told BANASIAK that the job opportunity is in Florida.

Sometime later BANASIAK receives a call from the agency telling him that he got the job. He takes his belongings and moves to Florida. BANASKIAK lives in a small house on EPSTEIN's property. This house had about 3 bedrooms. BANASIAK lived there by himself.

Investigation on 10/19/2021 at West Palm Beach, Florida, United States (In Person)File # 50D-NY-3027571Date drafted 10/26/2021by [REDACTED]

50D-NY-3027571

Continuation of FD-302 of (U) Interview of JANUSZ BANASIAK , On 10/19/2021 , Page 2 of 7

BANASIAK's job was to make sure the house was ready for when they arrived. He would make sure the pool was clean, would garden, shop, buy flowers and clean windows. BANASIAK would drive EPSTEIN and his assistants including MAXWELL.

When BANASIAK started working for EPSTEIN, there was a manual. He doesn't remember who gave it to him but he did read it. The manual explains how to prepare the house. There was also another person working named [REDACTED] [REDACTED] had mentioned something to BANASIAK about what EPSTEIN likes but most of the information BANASIAK got was from MAXWELL. MAXWELL tells BANASIAK what EPSTEIN's favorite foods are, what flowers he likes, where to buy groceries, how to answer the phone and what he likes.

BANASIAK remembers meeting with the FBI previously and he gave them the receipts of purchases he made for the house using petty cash.

It was either MAXWELL or the accountant that told BANASIAK how to use the petty cash. BANASIAK would remove money from the bank for gas, groceries and such (\$2000 at a time). BANASIAK would make a report on the computer of all the expenses. BANASIAK was taught how to do this when he first got hired. After he spends the \$2000 BANASIAK would take out another \$2000 cash. This was prior to them moving to credit card purchases.

BANASIAK IS SHOWN A COPY OF THE HOUSEHOLD MANUAL.

BANASIAK states "Yes I recognize this, this is the manual that I mentioned to you guys." BANASIAK states this is what he had previously described to "you" [REDACTED] over the phone. BANASIAK read this on his first day while in bed. BANASIAK does not remember if it was a bound book. BANASIAK thinks it may have just been paper like this and stapled together. BANASIAK recognizes the text in the manual, for example how to answer the phone and how to maintain the bathrooms.

EPSTEIN did not answer the phones. MAXWELL tells BANASIAK to answer the phones and what to say. BANASIAK is told to introduce himself and say this is EPSTEIN residence. BANASIAK is not allowed to tell that person on the phone if EPSTEIN is there or not. BANASIAK would take a message and then write it down in a message book. If it was a short message BANASIAK would write it down right away while still on the phone. If it was a long message BANASIAK might write it after he hangs up. Either way the message was to be

EFTA00040279

50D-NY-3027571

Continuation of FD-302 of (U) Interview of JANUSZ BANASIAK , On 10/19/2021 , Page 3 of 7

written right away and never the next day.

BANASIAK IS THEN SHOWN MESSAGE PADS

31E-MM-108062 ITEM #2 1B1-2A (government exhibit 1)

BANASIAK states this is the message book that they would write all the messages in when people call.

BANASIAK recognized his handwriting and signature on the following messages:

2/2/05 2,3,4

2/5/05 2

2/13/05 3,4

2/16/05 1,2

2/18/05 2,4

2/24/05 1,2

31E-MM-108062 ITEM #2 1B1-2C (government exhibit 3)

BANASIAK does not recognize his handwriting in this book.

31E-MM-108062 1B2-36 (government exhibit 4)

BANASIAK recognized his handwriting and signature on the following messages:

2/4/05 2,3,4

2/4/05 1 ([REDACTED]), 2,3,4

2/12/05 3,4

2/15/04 1,2,3

2/22/05 1,2,3,4

50D-NY-3027571

Continuation of FD-302 of (U) Interview of JANUSZ BANASIAK, On 10/19/2021, Page 4 of 7

2/26/05 3

2/28/05 1, 2, 3, 4

2/28/05 1 [REDACTED], 2

3/1/05 3

3/5/05 1, 3

3/8/05 1, 2, 3, 4

3/9/05 1 [REDACTED], 2, 3, 4

2/18/05 1 (DR GARECKI), 2, 4

3/18/05 2 [REDACTED] 4

3/22/05 3, 4

3/29/05 1, 2, 3, 4

4/1/05 1, 2, 3, 4

4/10/05 1, 2, 3, 4

4/10/05 1 [REDACTED], 2, 3, 4

4/11/05 1, 2, 3, 4

4/20/05 1, 3, 4

5/7/05 1, 2, 4

5/5/05 2, 3

5/21/05 1, 2, 3, 4

5/23/05 1, 2, 3, 4

5/29/05 1, 2, 3

6/10/05 1, 2, 4

6/12/05 1, 3

EFTA00040281

50D-NY-3027571

Continuation of FD-302 of (U) Interview of JANUSZ BANASIAK , On 10/19/2021 , Page 5 of 7

6/18/05 3,4

6/22/05 1,2,3,4

7/1/05 1

7/7/05 1,2,4

7/17/05 1,2,3,4

7/23/05 1,3,4

8/15/05 1,2,4

8/18/05 2,4

8/20/05 1,2,3,4

8/20/05 1 [REDACTED] 2,3,4

9/3/05 1,2,3,4

When EPSTEIN would arrive with the girls BANASIAK would try to give them space or privacy so he wouldn't answer as many phone calls during that time.

BANASIAK started working for EPSTEIN in 2005 and stopped in 2017.

BANASIAK is asked if he ever learned that there was an investigation into EPSTEIN.

BANASIAK states that one day police showed up with a search warrant at the house. That's when BANASIAK learned that there was an investigation. BANASIAK was sitting at his computer in the home on the property that he was living in. He saw 4-5 guys show up through the window. They stepped in and introduced themselves, showed and read BANASIAK the search warrant. They told him they had to search the house. BANASIAK was present for the search. There was also a designer for the house present as well. They put everyone aside during the search. BANASIAK then learned what EPSTEIN was accused of in the newspapers.

BANASIAK lived in that small house on the property until 2017. BANASIAK was

50D-NY-3027571

Continuation of FD-302 of (U) Interview of JANUSZ BANASIAK , On 10/19/2021 , Page 6 of 7

asked if he ever came to understand what was going on with EPSTEIN's case. BANASIAK remembers that EPSTEIN wasn't present on the day of the search warrant. BANASIAK called the New York office. They called him back and wanted BANASIAK to deliver the warrant papers to EPSTEIN's lawyer. BANASIAK believes he called after the warrant was done because police asked them to not make any calls.

After the warrant, BANASIAK learned about what EPSTEIN was accused of in the papers and on TV. BANASIAK never talked to EPSTEIN about it. EPSTEIN didn't talk very friendly with the staff. If EPSTEIN wanted something to be done in the house he would tell the office and then they would tell BANASIAK.

EPSTEIN spent the whole year traveling from one house to another (New York, New Mexico, Paris and Florida). EPSTEIN never stayed in Palm Beach for more than a week. After the warrant, they renovated the house. They rebuilt the walls and floor and EPSTEIN was not there during this time which was about 6-8 months. BANASIAK did not talk to EPSTEIN during this time. BANASIAK thought maybe EPSTEIN was in New York or other places.

EPSTEIN showed up one day to appear in court in Palm Beach. This is the time BANASIAK saw him after the warrant. Since then BANASIAK learns that EPSTEIN pleads guilty and goes to jail. BANASIAK had picked EPSTEIN up at the airport. EPSTEIN stayed for 2-3 days prior to his court date. BANASIAK knew he was going to court because BANASIAK drove him to the court.

BANASIAK read in the news that EPSTEIN plead guilty to solicitation of underage prostitution. BANASIAK was shocked when he learned this. BANASIAK has not seen anything that what EPSTEIN was accused of. BANASIAK knew they were coming and going but didn't see anyone being forced. If he would have known something was going on he would have said something.

BANASIAK thought about changing his job. He even looked and called around. BANASIAK thought it was better to stay than to find another job. There wasn't a lot of work for BANASIAK to do with EPSTEIN because he was in jail. As time went on BANASIAK couldn't find anything better to work.

BANASIAK was disappointed with EPSTEIN in what he was accused of. BANASIAK thinks it was wrong but he was settled down with his situation. BANASIAK started at \$65,000 and got raises every year. After EPSTEIN got arrested,

EFTA00040283

50D-NY-3027571

Continuation of FD-302 of (U) Interview of JANUSZ BANASIAK , On 10/19/2021 , Page 7 of 7

BANASIAK was told EPSTEIN cut 10% from everyone's pay. After EPSTEIN finished his sentence, he did not raise the employees back 10%. BANASIAK then seriously considered changing his job but nothing came up.

The household manual was maybe given to BANASIAK by someone in the house but he is not sure who. BANASIAK doesn't know who wrote it. BANASIAK shared this manual with his coworkers.

BANASIAK IS THEN SHOWN THE CHECKLISTS WITHIN THE HOUSEHOLD MANUAL

BANASIAK recognizes the date and the signature portion. BANASIAK does not remember if he was ever asked to fill these out.

BANASIAK remembers a copy of the manual being in the house but he is not sure where it was kept.

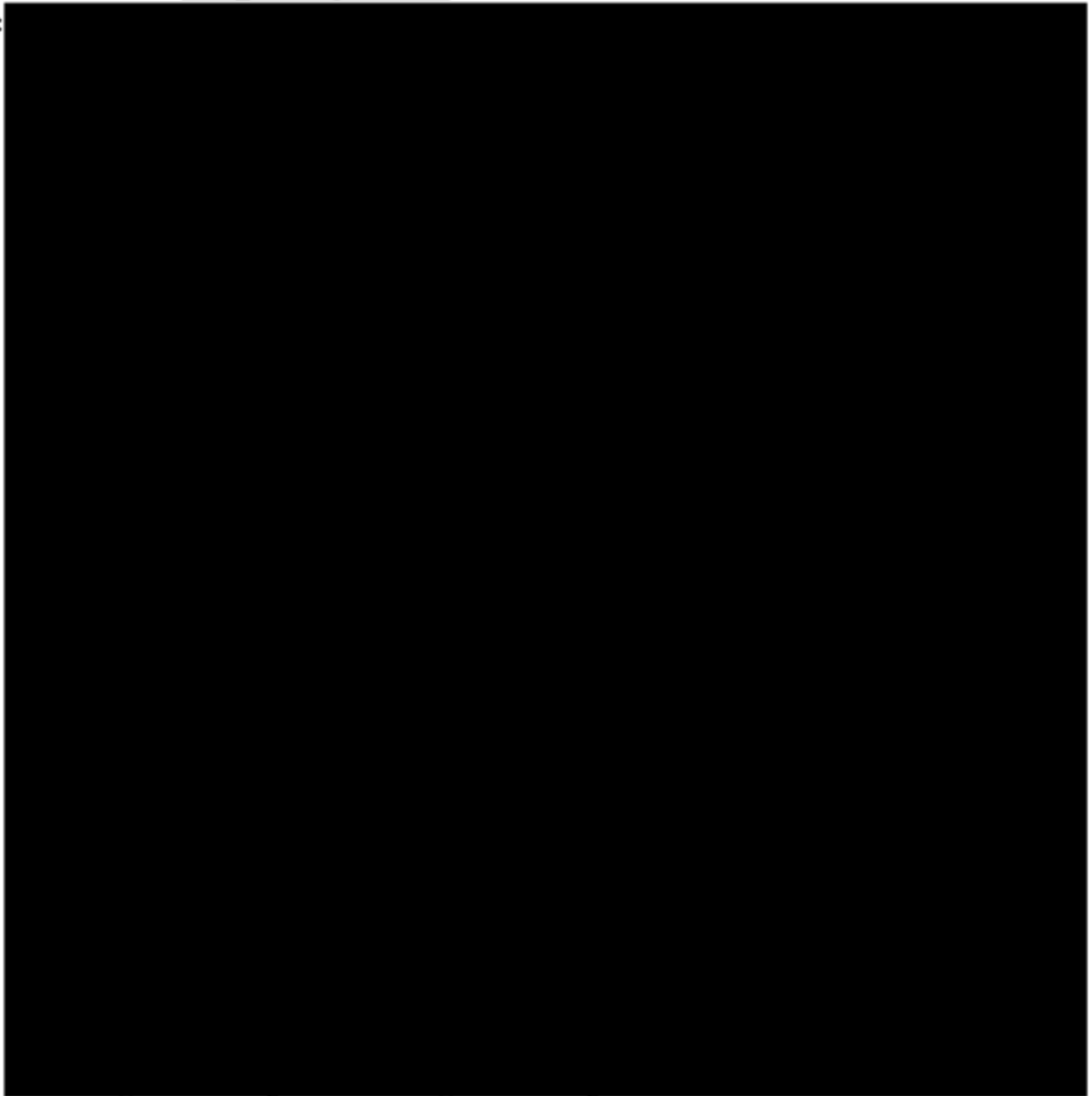
	Possible Date(s)	Witness	Witness Location	Notes for [REDACTED]
1	11/29	Birth certificate custodian		
2	11/29	[REDACTED]	Florida	1) Not at same hotel as [REDACTED]
3	11/29 through 12/1	Jane Doe ([REDACTED])	Los Angeles	
4	11/30 through 12/1	[REDACTED] ([REDACTED])	Los Angeles	
5	11/30 through 12/1	[REDACTED]	New York City	
6	11/30 through 12/1	John Doe ([REDACTED])	Los Angeles	
7	11/30 through 12/1	TBD Interlochen	Michigan	
8	12/1 through 12/2	Dr. [REDACTED]	Rhode Island	
9	12/2	[REDACTED]	Florida	1) Not at same hotel as [REDACTED]
10	12/2	TBD (Mar-a-Lago Custodian)		
11	12/2	[REDACTED]		
12	12/2 through 12/3	[REDACTED], former Palm Beach P.D.	Florida	
13	12/3	Sgt. [REDACTED], Palm Beach P.D.	Florida	
14	12/3 through 12/6	[REDACTED]	Based in Texas, but prep could likely be done entirely by videoconference	1) Stay at same hotel as [REDACTED] 2) Different hotel from [REDACTED] [REDACTED]
15	12/3 through 12/6	[REDACTED]	Arkansas	1) [REDACTED] 2) Stay at same hotel as [REDACTED]

				3) Different hotel from [REDACTED] [REDACTED]
16	12/6	[REDACTED]	Arizona	
17	12/6 through 12/7	JP Morgan Witness		
18	12/6 through 12/7	[REDACTED]	Los Angeles	1) Not at same hotel as [REDACTED] [REDACTED]
19	12/7 through 12/8	[REDACTED]		1) [REDACTED] 2) Better for her to not stay at hotel at same time as other witnesses
20	12/6 through 12/8	[REDACTED]	Florida	1) [REDACTED]
21	12/8	[REDACTED] (court reporter)		
22	12/8	AT&T records custodian		
23	12/8 through 12/9	[REDACTED]	Florida	1) [REDACTED] 2) Different hotel from [REDACTED]

24	12/8 through 12/9	PB School District Records Custodian (possibly [REDACTED] [REDACTED])			
25	12/8 through 12/9	[REDACTED] (FedEx Custodian)			
26	12/8 through 12/9	[REDACTED]		1) Not at same hotel as [REDACTED]	
27	12/9	[REDACTED] (court reporter)			
28	12/9	[REDACTED]	Florida		
29	12/19	[REDACTED]	Florida		
30	12/9 through 12/10	[REDACTED]	Florida		
31	12/9 through 12/10	[REDACTED]	New York		
32	12/9 through 12/10	FBI Cart, [REDACTED]	New York	No travel needed	
33	12/10	TBD FBI C20, [REDACTED]	New York	No travel needed	

From: Chris Dilorio <[REDACTED]>

To:



Subject: Fw: Formal appeal for denial covered action 2015-016/ Knight Capital TCR & Appendix

Date: Mon, 07 Dec 2020 18:18:15 +0000

Attachments: KCG_Appendix_3-20_13_penultimate.docx; KCG_TCR_3-20-13-penultimate_draft.pdf; KCG_TCR_3-20-13-penultimate_draft.docx; KCG_Appendix_3-20_13_penultimate.pdf

More IG fraud

this time the "independent" DFC IG: "investigating" Kushner roommate Boehler \$765 mil loan to almost insolvent KODK/Blackstone: Jason New.

The DFC IG was hired on Sep 8 2020 and praised by Boehler who would be investigated by him

[Anthony Zakel Named DFC's First Inspector General | DFC](#)



Anthony Zakel Named DFC's First Inspector General | DFC

Zakel will lead the independent oversight of all agency programs and operations WASHINGTON – U.S. International Development Finance Corporation (DFC) is pleased to welcome Anthony Zakel to serve as the agency's first dedicated Inspector General. In this role, Zakel will lead the independent oversight of DFC to support the effectiveness and efficiency of

www.dfc.gov

The KODK "Investigation" was announced on Sep 14

[Report: Inspector General for federal agency to review proposed Kodak loan | WXXI News](#)



Report: Inspector General for federal agency to review proposed Kodak loan | WXXI News

The inspector general of the federal agency that helped put together a planned \$765 million dollar loan for Eastman Kodak is reviewing that deal. That's

www.wxxinews.org

Like the grossly corrupt SEC IG Hoecker "investigations" of massive SEC corruption and criminal activity, the Kushner/Bohler/Blackstone/ DFC "investigation" was also a forgone conclusion

[No wrongdoing found in Kodak COVID-19 drug production deal: report | TheHill](#)

No doubt the SEC and DoJ will want to look at this BILLION dollartaxpayer funded Trump/Kushner hydroxychloroquine Grift

But then again: Blackstone/New/Schwarzman are very high up on the SEC/DoJ "do not investigate list"

See below

Cheers!

Christopher J Dilorio

Whistleblower Extraordinaire

From: Chris Dilorio <[REDACTED]>

Sent: Wednesday, October 14, 2020 10:17 AM

To: [REDACTED]

Subject: Fw: Formal appeal for denial covered action 2015-016/ Knight Capital TCR & Appendix

Different version/additional information

From: Chris Dilorio <[REDACTED]>

Sent: Wednesday, September 23, 2020 7:18 PM

Subject: Fw: Formal appeal for denial covered action 2015-016/ Knight Capital TCR & Appendix

Judges Cave and Nathan,

If there was ANY question as to the veracity of my extremely serious allegations, the SEC put it to rest today with its "clarification" and new rules governing the Whistleblower program:

My preliminary denial in June for the Opco Award application which was 5 years in the waiting: "SEC staff never saw Mr Dilorio's information"

I refer you to the ONLY new rule in the "clarifications" in the interest of "transparency"

<https://www.sec.gov/rules/final/2020/34-89963.pdf>

SECURITIES AND EXCHANGE COMMISSION 17 CFR Parts 240 and 249 RIN 3235-AM11 ACTION SUMMARY

SECURITIES AND EXCHANGE COMMISSION . 17 CFR Parts 240 and 249 [Release No. 34-89963; File No. S7-16-18] RIN 3235-AM11 . Whistleblower Program Rules

www.sec.gov

New Rule 240.21F-18 Summary Disposition

(3) The information you submitted was never provided to or used by the staff handling the covered action or the underlying investigation (or examination), and the staff members otherwise had no contact with you.

AKA the Christopher J Dilorio Rule. Created to deny awards of rightful compensation. Per my appeal: a whistleblower CAN NOT know who at the SEC he/she should contact as investigations are done in strict confidentiality. Further, the OWB itself is the CENTRAL contact for whistleblowers. It is the EXPLICIT and EXCLUSIVE responsibility of the OWB to distribute whistleblower information within the SEC. This "rule" is FURTHER overwhelming evidence of SEC corruption and obstruction.

Judges Cave and Nathan: ALL information presented to your Courts must be treated with extreme skepticism if not outright disdain. IF the SEC is willing to commit massive fraud on whistleblowers who expose their corruption and criminal activity just imagine the evidence it is willing to fabricate to bring a case like they are in Kamensky. An immediate STAY in Kamensky is warranted until an independent thorough investigation of my claims can be executed. ALL evidence

presented to your courts by the SEC must be questioned in light of the overwhelming evidence I have provided. Again: this corruption goes straight to Jay Clayton himself. His former colleague Jared Fishman has played a key role in this massive fraud. Clayton NEVER disclosed these conflicts. In addition, your Honors are in possession of other Clayton/Sull Crom/AQR/Girsky facilitated fraud: Nikola. This is what it has come to when you blow the whistle on the grossly corrupt SEC: They create a completely arbitrary and fraudulent rule to silence you.
Rule 204-21F summary disposition aka Screw the whistleblowers exposing SEC corruption Rule OR
The Christopher J Dilorio Rule

Regards,
Christopher J Dilorio
Whistleblower
[REDACTED]

FROM:Chris Dilorio <[REDACTED]>
Sent: Wednesday, September 23, 2020 5:27 AM

[REDACTED]

Subject: Fw: Formal appeal for denial covered action 2015-016/ Knight Capital TCR & Appendix

Judges Cave and Nathan,
My allegations are chock full of members of the SEC "Do Not investigate Club". Per my TCR: Key to the Aug 2012 "glitch/Bailout: Blackstone/Schwarzman. Blackstone had done extensive Due Diligence on Knight prior to the "glitch" and had considered buying them north of \$14/sh. Somehow/some way Blackstone decided not to go ahead with buying Knight not too long before the "glitch" which took the stock to \$3. The ultimate bailout deal was NOT collateral based. Rather a convert with a %50 discount to \$3: \$1.50/share. "WHEW". Per my TCR: ALL 2012 "glitch" bailout participants including Blackstone knew EXACTLY the fraud on the Knight balance sheet. Because of SEC corruption/criminal obstruction, NITE is insolvent TODAY. Absolutely nothing has changed. A massive ongoing fraud on the public.
As a direct result of the SEC "Do not investigate Club", The KODK/Blackstone fraud on US Taxpayers (see below) was perpetrated on the public.
Steve Schwarzman/Blackstone are near the top of the SEC "Do not investigate List".
Obviously, Mr Kamensky is not in the Club.
As you can clearly see from my appeal to the OWB: The SEC intended to run out the clock. 5 years in the waiting in their Preliminary Determination Opco Award Denial for " Investigators never saw my information". Yet, SEC actions based on my information include: Hanover/Magna, JMJ/Keener, Fife, Southridge/Hicks, Opco, and UBSS. Missing somehow: NITE, Handler/Jefferies, Blackstone/Schwarzman etc etc.
The last overt act of this massive conspiracy has not yet occurred.
Mr Kamensky and I are BOTH victims of a longstanding and corrupt relationship between the SEC and Handler/Jefferies et al. Also victim of this corruption: the investing public the SEC is mandated to protect and the US Taxpayer.
Regards,
Christopher J Dilorio

Whistleblower

From: Chris Dilorio <[REDACTED]>

Sent: Wednesday, September 16, 2020 6:25 AM

Subject: Fw: Formal appeal for denial covered action 2015-016/ Knight Capital TCR & Appendix

Janey,

Schwarzman must be pretty close to the top of the SEC's "do not investigate" list.

The latest Schwarzman/Blackstone orchestrated fraud and cover up: KODK

Today, the KODK Board Member Jason New: Blackstone "independent" outside inquiry by the law firm Akin Gump is in

<https://www.kodak.com/content/products-brochures/Company/Report-to-the-Special-Committee-09.15.2020.pdf>

"gaps" indeed

The flowery New/BX cover up is chock FULL of gaps.

"Introduction to Phlow"

Phlow: the VA consortium receiving \$350 mil in Government Covid funding to provide Trump pushed Covid Cure: hydroxychloroquine

<https://www.prnewswire.com/news-releases/phlow-corporation-awarded-354-million-hhsasprbarda-contract-to-manufacture-essential-medicines-in-shortage-301061648.html>

Phlow Corporation Awarded \$354 Million HHS/ASPR/BARDA Contract to Manufacture Essential Medicines in Shortage - PR Newswire

RICHMOND, Va., May 19, 2020 /PRNewswire/ -- Phlow, a U.S.-based, public benefit drug manufacturing corporation, has received federal government funding of \$354 million for advanced manufacturing ...

www.prnewswire.com

Phlow already has/had a long standing relationship with Ampac Fine Chemicals

<https://www.phlow-usa.com/about-us/>

EFTA00040292



About Us | Phlow Corporation

Robert Mooney is a tireless champion of creativity and business acumen. As an entrepreneur and co-founder of New Richmond Ventures (NRV), Bob counseled startups and early stage companies on accounting and financial reporting, capital strategies, equity raising, project financing, milestones, business

www.phlow-usa.com

In May 2020, Phlow was re starting/building a mfg facility/warehouse with partner Ampac (AFC) to fulfill its Government contract

<https://richmondbizsense.com/2020/05/20/new-richmond-based-pharma-startup-with-350m-in-funding-eyes-facility-in-petersburg/>



New Richmond-based pharma startup with \$350M in funding eyes facility in Petersburg - Richmond BizSense

Earlier this month BizSense first reported Phlow's initial government contract for \$6 million, but details on the company's plans remained unclear at the time.. Gupton said in an interview Tuesday the company's plans have been in the works for about 18 months, well before COVID-19 hit.

richmondbizsense.com

Per the KODK/New/BX/Akin Gump cover up: pg 20

"On June 15 2020,Kodak signed a Letter of Intent with Phlow in furtherance of its application to the DFC to show it had a CUSTOMER for its future API's"

Most definitely "DEFINITIVE AND MATERIAL"

So, where is the SEC reviewed/required 8k for this agreement?

<https://www.sec.gov/cgi-bin/browse-edgar?CIK=31235>

Meaning: the DFC application was a FRAUD. Fraud on the government. Fraud on American taxpayers.

Further: WHY would the DFC consider "loaning" \$765 million to KODK with NO EXISTING API capability when it already granted LESS money to Phlow/Ampac with proven capabilities? Answer: KODK liquidity issues are SEVERE

Like Milken: Insider trading is NOT the real issue here. The latest BX orchestrated "glitch": KODK.

I know this information may be more than the SEC/DoJ are capable of comprehending.

Call me and I'll walk you through it SLOWLY.

Cheers!

Christopher J Dilorio
Whistleblower

From: Chris Dilorio <[REDACTED]>

Sent: Tuesday, September 1, 2020 7:40 AM

Subject: Fw: Formal appeal for denial covered action 2015-016/ Knight Capital TCR & Appendix

Janey,

MORE on the Blackstone/Trump/Kushner KODK P&D gift.

Again, BX helped orchestrate the Knight "glitch" and bailout. No doubt, the "luckiest" f'ers on the Street. VERY high on the SEC do not investigate list. So, they can continue to facilitate criminal activity.

See below: Jason New: KODK BoD: BX. In charge of the KODK "internal investigation". Now we read where D E Shaw has taken a 5% stake in KODK. guess who DE Shaw largest investor is: Blackstone. Corruption cover up. For the record Janey

<https://www.thetrustedinsight.com/investment-news/de-shaw-blackstone-20190325420/>

Cheers!

Christopher J Dilorio
Whistleblower

From: Chris Dilorio <[REDACTED]>

Sent: Thursday, August 20, 2020 12:04 PM

[REDACTED]

Subject: Fw: Formal appeal for denial covered action 2015-016/ Knight Capital TCR & Appendix

Mr Best,

Congratulations on your new position as Director of SECNY.

No doubt you have earned the promotion. For those of you who don't know Dick Best from his FINRA days, this masterpiece is what got him his job at the SEC Atlanta office

<https://www.finra.org/media-center/news-releases/2014/finra-fines-brown-brothers-harriman-record-8-million-substantial-anti>

The BBH AML complaint. Truly, fantastic work.

ALL of the entities in the complaint are un named. WHY?

This is my information.

Swiss Banks, FFI's, and of course: penny stock trading fairies aka executing BD's/MM's that made it all possible. Per Dick's complaint: BBH delivered 80%+ of the trades to executing BD's/MM's. Did Dick Best criminally obstruct an investigation into my claims? Per my extensive correspondence with Robin Traxler at FINRA AND the fact that the SEC had my Knight Capital TCR in its possession for almost a year when Dick brought his BBH complaint. So, did Dick's complaint implicate entities in my TCR and that's why ALL of the entities in Dick's complaint are un named? Most certainly YES.

Recall, this scheme generated \$850 MILLION in proceeds. Dick's \$8 mil fine was not a deterrent. Intentionally so.

So Congrats Dick on your new position as Director at SECNY. Janey, Hoecker, Dick, the record is extensive of my correspondence including Dick Best at the Atlanta Office. No doubt he will be recusing himself related to matters involving the un named entities in his FINRA BBH complaint. OR will he do what is expected at the SEC: Criminally obstruct investigations while screwing whistleblowers like me?

Cheers!

Christopher J Dilorio

Whistleblower
[REDACTED]
[REDACTED]

From: Chris Dilorio <[REDACTED]>

Sent: Wednesday, August 19, 2020 6:53 AM
[REDACTED]

[REDACTED]

Subject: Fw: Formal appeal for denial covered action 2015-016/ Knight Capital TCR & Appendix

Further:

Janey, Hoecker, Jay, Mehraban et al

Let me help narrow down the SEC facilitated, ongoing accounting fraud at NITE as I know none of you have ever spent a day on a trading desk:

IF the avg holding period for VIRT HFT is a matter of seconds AND VIRT goes home flat every night, then what is the receivable/fails related to? With the core Virtu HFT business eliminated, what that does that leave? The CASH OTCM business maybe? Should I draw a picture in crayon for you Ms Mehraban?

NITE: 3 different CFO's in the last year. Ms Mehraban, How much is your former Paul Weiss colleague/boss Dougie Cifu paying you to criminally obstruct an investigation of my allegations?

Janey, Hoecker, Mehraban et al: When it comes to trading fraud/accounting fraud cover ups, SEC attorneys are CLEARLY not qualified.

The record there is ALSO IRREFUTABLE.

Here glitchy glitchy.

Cheers!

Christopher J Dilorio

Whistleblower

From: Chris Dilorio <[REDACTED]>

Sent: Tuesday, August 18, 2020 6:37 PM

[REDACTED]

Subject: Fw: Formal appeal for denial covered action 2015-016/ Knight Capital TCR & Appendix

Janey, Hoecker, Mehraban, Jay et al,

The massive SEC facilitated fraud on the public known as Knight/KCG/VIRT: NITE is reaching epic proportions in August 2020. For the new "accounting" hires at the SEC:

In 1Q2020, the receivable at NITE was up 90% or \$1.2 BILLION from Dec 2019 to \$2.562,721 billion

Per the extensive record Janey: fails: because of self clearing are booked as a receivable. FRAUD. no intention of delivering. More accurately a liability. AND per my 2013 TCR: a large portion: structural liability as a result of an open naked short fail position WHEN not if a reverse split is approved by the grossly corrupt SEC/FINRA. There are some new "buckets" Malusso, Ioffe, Dougie large have created within the Receivable as well. Creative. The accounting shell game: moving fraud (abusive naked shorts) from bucket to bucket.

The 1Q2020 10Q

<https://www.sec.gov/ix?doc=/Archives/edgar/data/1592386/000159238620000006/virtufinancial03-31x20.htm>

Inline XBRL Viewer - SEC

The Inline XBRL Viewer allows a user to quickly and easily review details of the tagged information in an Inline document by automatically placing a top and bottom highlight border around each tagged numeric fact and left and right border for each block tagged fact.

www.sec.gov

pg 23.

Buckets total \$2.562,721 BILLION

the 2Q2020 10Q

<https://www.sec.gov/ix?doc=/Archives/edgar/data/1592386/000159238620000009/virt-20200630.htm>

Buckets total \$2.441,283 BILLION

The FRAUD (please see the record Janey).

ALL of the receivable items are related to SETTLEMENT.

Certain items within the receivable: buckets: would zero out within days IF VIRT was in compliance with the Securities LAWS: Close out requirements of Rule 204. So, isn't it beyond amazing THAT: although there was some change in certain buckets AND that the amounts were zeroed out within days of March 31, 2020 ONLY to end the quarter June 30, 2020 a mere \$121.438 MILLION difference from the March 31, 2020 ending balance?????

That is absolutely f'n amazing: \$2.562,721 BILLION zeroed out from March 30, 2020 THEN a \$2.441.283 balance at June 30,2020. Well, the SEC does believe in "penny stock trading fairies" too.

Nope. Not penny stock trading fairies. AND VIRT didn't zero out :FAILED to SETTLE BILLIONS \$\$ in transactions. This massive fraud is due to NEVER closing/covering as is mandated by LAW. SEC, ongoing, massive fraud on the public. Classic bucket shell game. A la FCM and Reverse mortgages.

NOTHING has changed thanks to SEC corruption and obstruction while screwing whistleblowers like me.

The massive NITE accounting fraud facilitated by the SEC that facilitates the ongoing fraud on the public the SEC is mandated to protect.

CLEARLY, IRREFUTABLY: NITE is and always has been a criminal entity. ILLEGAL NAKED SHORTING drives trading profits at NITE. ALWAYS has. Janey, please post Jay Clayton AND Ms Mehraban NITE conflict disclosures. No doubt, Dougie large will see this e mail the same way the grossly corrupt SEC has disclosed my information to NITE for the last 10 years. NITE is GROSSLY insolvent TODAY August 18,2020.

Cheers!

Christopher J Dilorio

Whistleblower

[REDACTED]
[REDACTED]

From: Chris Dilorio <[REDACTED]>

Sent: Tuesday, August 11, 2020 6:53 AM

[REDACTED]

Subject: Fw: Formal appeal for denial covered action 2015-016/ Knight TCR & Appendix

Janey, Hoecker et al

SEC criminal obstruction virtually real time.

<https://www.sec.gov/news/press-release/2020-178>

SEC.gov | SEC Charges Interactive Brokers With Repeatedly Failing to File Suspicious Activity Reports

The Securities and Exchange Commission today announced that Interactive Brokers LLC will pay an \$11.5 million penalty to settle charges it repeatedly failed to file Suspicious Activity Reports (SARs) for U.S. microcap securities trades it executed on behalf of its customers.

www.sec.gov

SECNY: Lara Shalov Mehraban. Ms Mehraban, I've asked this before: Was Dougie "Large" Cifu your boss at Paul Weiss? The IBKR "complaint" is getting very close to your former boss/colleague isn't it?

Questions Ms Mehraban doesn't want the public to see:

Her former boss/colleague Dougie "Large" Cifu hired Alex Ioffe as VIRT CFO in 2019. From 2003-2019 Ioffe was CFO at IBKR. INCLUDING the period covered in Ms Mehraban's complaint.

Not filing SAR's, Microcap securities, AML red flags. No kidding. WHY are the securities un named? WHO was ultimate executing BD/MM?

As self clearing Ms Mehraban, isn't Knight/KCG/VIRT (Cifu): NITE the LARGEST clearing agent of microcap securities? How many SAR's coming out of your former boss executing BD/MM?

Per my TCR: NONE. ZILCH. NADA. How do I know that?

When would the criminal enterprise NITE which is run by Ms Mehraban's former Paul Weiss boss/colleague Cifu file a SAR:

BEFORE

or

AFTER trading billions of shares?

Did NITE Compliance rely on IBKR/Ioffe compliance? That would be a violation wouldn't it?

Ms Mehraban is the poster child of SEC corruption and criminal obstruction while screwing whistleblowers like me. Virtually real time in August 2020. Very much an ONGOING and massive fraud on the investing public.

Ms Mehraban, please pass along my warmest regards to your former Paul Weiss boss/colleague Dougie "Large". No doubt you "chat" often.

The record is overwhelming AND irrefutable.

Cheers!

Christopher J Dilorio

Whistleblower

[REDACTED]
[REDACTED]

From: Chris Dilorio <[REDACTED]>

Sent: Monday, August 10, 2020 8:32 AM

Subject: Fw: Formal appeal for denial covered action 2015-016/ Knight TCR & Appendix

Janey, Hoecker et al

speaking of NO 8K, recall the extensive record for the criminal/insolvent/fraud on the public

Knight/KCG/VIRT:NITE

The record Janey: Clayton/Sull Crom/Fishman "sale" of FCM business to other criminal firm Wedbush with NO 8K

3Q2014 10Q

<https://www.sec.gov/Archives/edgar/data/1569391/000156939114000013/kcg2014093010-q.htm>

KCG then CFO Bisgay resigned with 2 weeks left in the quarter and didn't certify the financials. WHO certified along with Coleman? Sean P GALVIN.

Cifu, Viola, Urban, Hutchins et al getting the fraud band back together

<https://finance.yahoo.com/news/virtu-financial-announces-changes-finance-105100941.html>

WHY would "Cutting edge technology firm" VIRT want to go with a guy who knows how to run the books at low as low tech gets OTCM cash trading firm Knight/KCG? The core business at Knight/KCG/VIRT: NITE is and always has been: abusive naked shorting OTCM (and other) publicly traded shells to facilitate money laundering
Here glitchy glitchy

Cheers!

Christopher J Dilorio

Whistleblower
[REDACTED]
[REDACTED]

From: Chris Dilorio <[REDACTED]>

Sent: Friday, August 7, 2020 6:20 AM

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight TCR & Appendix

The SEC facilitated fraud on the public continues unabated. MORE irrefutable evidence of SEC criminal obstruction while screwing whistleblowers like me.

A direct result of this ongoing massive fraud on the public.

After NITE reported its 1Q2020 results I again again, again, like the last 10 years, alerted the grossly corrupt SEC to the massive accounting fraud at NITE as a direct result of abusive naked shorting.

Per my 2013 TCR Janey, Hoecker, Jay et al:

NITE is in a constant state of insolvency as a result of illegal, criminal, abusive naked shorting OTCM money laundering shells. This illegal activity drives trading revenue at NITE. This illegal activity is and ALWAYS has been the core business at NITE. This very profitable albeit illegal activity is WHY Sull Crom client KCG was bought by Virtu. This illegal activity is WHY NITE has been repeatedly bailed out by GS,BX,JEF, JPM and the SEC

The receivable is where NITE books naked short fails as a result of self clearing. NITE has no intention of closing/ can't close these naked short positions. NOT a legit asset. Further, the receivable isn't a legit asset NITE can convert to cash for its own use. There are prior commitments on these "assets": SETTLEMENT

In 1Q2020, the NITE receivable grew to \$2.5 BILLION. UP 90% from December 2019

https://www.sec.gov/Archives/edgar/data/1592386/000110465920057660/tm2018404d1_ex99-1.htm

SEC.gov | HOME

Exhibit 99.1 . Virtu Announces First Quarter 2020 Results . NEW YORK, NY, May 7, 2020 - Virtu Financial, Inc. (NASDAQ: VIRT), a leading provider of financial services and products that leverages cutting edge technology to deliver innovative, transparent trading solutions to its clients and liquidity to the global markets, today reported results for the first quarter ended March 31, 2020.

www.sec.gov

Per the SEC reviewed 8k filing this am Aug 7, 2020 NITE reported 2Q2020 earnings. showing the receivable roughly flat with 1Q2020 at 2.44 BILLION

https://www.sec.gov/Archives/edgar/data/1592386/000110465920091707/tm2026789d1_ex99-1.htm

These are NOT "assets". More accurately, these are LIABILITIES. Massive accounting fraud. After moving these fraud "assets" to the appropriate liability classification, NITE tangible book value is GROSSLY insolvent. The SEC has obstructed my allegations for several years while allowing NITE to write down this structural liability on more than 1 occasion. Further, sell side analysts at the guidance of Cifu et al never question these EGREGIOUS balance sheet issues. AND, with the grossly corrupt SEC blessing, Cifu et al never disclose insolvency in any SEC filing OR investor presentation.

After dismal April/May REPORTED OTCM volumes on the FINRA now controlled website, June saw a dramatic spike in share volumes.

The Top 25 OTCM money laundering shells by share volume in June 2020 and share price

PLYZ	.00015
PVDG	.0008
RTON	.00015
GRST	.001
RNVA	.76 (rev split)
OZSC	.0049
EWLL	.0002
VSYM	.0012
OPTI	.14755
AFOM	.0001
SIML	.00025
IGEN	.0084
XMET	.0002
GTEH	.0001
ABCE	.0003
TSOI	.007
NTRR	.0014
GFTX	.0005
LVXI	.0003
SGMD	.0024
INQD	.002765
RBNW	.0005
TLSS	.0238
TPTW	.07215
HYSR	.0328

Combined price approximately \$1

How do stocks trade to trip zeroes? More buyers than sellers?

Covering/closing out naked short fails shouldn't be an issue. ONLY explanation: abusive naked shorting: MANIPULATION. NOT Bona Fide market making.

As a direct result of this massive, ongoing SEC facilitated fraud on the public, ABSOLUTELY NOTHING HAS CHANGED.

The record is irrefutable: SEC criminal obstruction while screwing whistleblowers like me to facilitate a MASSIVE, ongoing fraud on the public. Key facilitator: Jay Clayton/Jared Fishman: Sull Crom

Cheers!

Christopher J Dilorio
Whistleblower

From: Chris Dilorio <[REDACTED]>

Sent: Thursday, July 30, 2020 9:31 AM

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight TCR & Appendix

MORE SEC corruption/obstruction/screwing whistleblowers like me.

Per my 2013 TCR attached Janey, we know that Schwarzman/Blackstone has played a key role in perpetuating the criminal entity Knight,KCG,VIRT:NITethe Sull Crom client.

We also know Trump and Schwarzy are BFF's. Schwarzy is also connected to Kushner and Epstein.

Schwarzy is most definitely on the SEC's "Do not investigate List"

A stroll down the record Janey: Around the same time as the SEC/BX/JEF/GS et al August 1 2012 NITE "trading glitch", Schwarzy/BX were key advisers to bondholders of Eastman Kodak and to the company also. Jason New: Blackstone was re elected to the KODK BoD in May 2020.

https://www.sec.gov/Archives/edgar/data/31235/000156459020027039/kodk-8k_20200520.htm

Then the Pumper/Grifter in Chief Trump goes out wide and far with this absolutely incredible news:

The camera/film company Eastman Kodak is now going to be the US savior in pharma ingredients supply chain. This is a page out of the penny stock grifter playbook. This is what happens when we have a WH full of money laundering shell grifters. So, what has been the result of this incredible pump/transformation? KODK has gone from 2 to 90 back to 40.

EFTA00040303

As is typical Trump/grifters/ and his criminal Clayton led SEC: the public hasn't seen a 8K filed by KODK to detail this incredible "transformation". The SEC has given its blessing to yet ANOTHER Trump/Grifter/Bag Men P&D. in KODK, FBO Trump BFF and Sull Crom client: Knight "savior" Schwarzy/BX. Had the grossly corrupt SEC investigated my claims instead of obstructing them and screwing me, MAYBE Schwarzy/BX would have thought twice about their latest gift: KODK. We know that Schwarzy is also a prolific GOP donor.

F'n criminals

Cheers!

Christopher J Dilorio

Whistleblower

[REDACTED]

[REDACTED]

From: Chris Dilorio <[REDACTED]>

Sent: Thursday, July 30, 2020 6:33 AM

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight TCR & Appendix

Still MORE IRREFUTABLE evidence of SEC criminal obstruction and corruption while screwing whistleblowers like me. Per the record Janey: Trump PA campaign Mgr David Urban on the BoD of #1 money laundering shell trader and Clayton/Sull Crom client NITE. Urban also on the BoD of money laundering shell: Pakastani/Canadian pot company w/ 200k in revenue FSD Pharma:HUGE. Today HUGE is up more than 100% on "news" it will pivot away from growing pot in Canada to "developing" a pot based cure for Covid. A money laundering shell. Of course, the grossly corrupt SEC has approved a \$20 million public offering for Urban/Trump: HUGE SEC facilitated P&D to facilitate money laundering

<https://www.sec.gov/Archives/edgar/data/1771885/000106299320003258/formsuppl.htm>

AGAIN, the SEC is a criminal organization facilitating criminal activity and protecting criminals at the expense of the public it is MANDATED to protect while screwing whistleblowers like me.

The record is extensive.

Cheers!

Christopher J Dilorio

Whistleblower

From: Chris Dilorio <[REDACTED]>

Sent: Tuesday, July 28, 2020 7:48 AM

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

STILL MORE OVERWHELMING evidence to support my extremely serious allegations that the SEC is a criminal organization, run by criminals, to support criminal activity while screwing whistleblowers like me.

Farkas: Michael: is a prolific Bag Man well known to the SEC. Farkas chose a Jaclin money laundering shell INTENTIONALLY. Blink Charging (BLNK) is ANOTHER SEC facilitated fraud on the public the SEC is MANDATED to protect.

Other Farkas money laundering shell: i Incubator

<https://www.sec.gov/cgi-bin/browse-edgar?CIK=1044693>

As is SOP for the grossly corrupt SEC: Revoked AFTER this massive fraud on the public was complete

<https://www.sec.gov/litigation/admin/2009/34-60013.pdf>

ALSO SOP for the corrupt SEC: No mention of Farkas and his controlling i Incubator entities in the complaint

<https://www.sec.gov/Archives/edgar/data/1044693/000104653200000261/0001046532-00-000261-index.htm>

<https://www.sec.gov/Archives/edgar/data/1044693/000104653200000265/0001046532-00-000265-index.htm>

<https://www.sec.gov/Archives/edgar/data/1044693/000104653200000263/0001046532-00-000263-index.htm>

ALSO missing from the i Incubator complaint: Executing BD/MM of the worthless Farkas certs dumped on the public while the grossly corrupt SEC watched. Those damn "penny stock trading fairies" AGAIN!

NOPE.

BLNK never should have happened. Farkas, his NETE CFO, Keener, Nordlicht, etc etc should have been shut down LONG AGO

Cheers!

Christopher J Dilorio

Whistleblower

[REDACTED]
[REDACTED]

From: Chris Dilorio <[REDACTED]>

Sent: Thursday, July 23, 2020 5:59 AM

[REDACTED]

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

The grossly corrupt SEC response to whistleblower OVERWHELMING evidence of money laundering ,manipulation, and fraud: MY INFORMATION has been remarkably consistent over the last 9 years++:
Obstruct, cover up, facilitate illegal activity at the expense of the investing public it is sworn to protect while screwing whistleblowers like me.

BLNK: A KNOWN Jaclin money laundering shell. Rev merger with a KNOWN Bag Man: Michael Farkas who was the largest shareholder of ANOTHER money laundering shell: SkyWay but somehow escaped the SEC investigation. With Board members like Engel: Drexel, Scigliano: Acies: NETE a CFO:New from NETE. A known to the SEC Bag Man: Keener who the SEC has kept up and running for YEARS since being BARRED (Not Exactly) by Industry SRO FINRA.

In addition to that name Farkas: ANDREW/Jonathan Farkas. Trump fundraiser and Epstein: Jeffrey: business partner, this fraud has an added element. So, after receiving my overwhelming evidence with AML red flags too numerous to count, what was the par for the course SEC response: Approved BLNK public offering just several days ago AND with my overwhelming evidence in hand. But, that's not where the corrupt SEC active facilitation of this massive fraud on the public ends. Yesterday, 7/22, BLNK put out a PR linking it to a few hundred charging stations in VA,MD,DC. This pr drove the stock up almost 30% at 1 point and closed 15% higher on almost 8x avg volume. A most certainly "MATERIAL" event. AND an event that required an SEC 8k filing if "DEFINITIVE" as well. No such 8K was filed by BLNK for this pr. This pr therefore must be complete FRAUD intended ONLY to facilitate a massive Pump and Dump on the public. It accomplished its intended fraudulent outcome. But, back to BLNK fka New Image Concepts: the company Between Blink and New Image Concepts, BLNK was known as Car Charging Inc

https://www.sec.gov/Archives/edgar/data/1429764/000114420414059745/v390669_def14c.htm

This 2014 SEC approved offering also had several red flags of its own. WHOPPERS in fact. Guess who ELSE was involved in this years in the operating money laundering shell? Platinum Funds/Nordlicht. With links to Kushner(s) and Trump lawyer Giuliani. Other NY entities, a Columbus OH entity, a Chicago entity, and a Belize entity. Still counting the AML red flags? The icing on the top of this massive SEC facilitated fraud: ex NM Governor Bill Richardson. Who, is also linked to Jeff Epstein and his NM Zorro Ranch.

BLNK: money laundering fraud on the public ACTIVELY facilitated by the SEC in July 2020 despite overwhelming whistleblower (me) information. Linked to Milken,Russia, Trump, and Epstein. Of course the 7/22 trading activity NEVER would have happened without willing, executing BD's and MM's like the criminal entity known as Knight,KCG,VIRT: NITE. Which has also been kept up and running by the grossly corrupt SEC despite overwhelming evidence of a massive, ongoing, criminal conspiracy detailed by a whistleblower: me.

Cheers!
Christopher J Dilorio
Whistleblower

[REDACTED]
[REDACTED]

From: Chris Dilorio <[REDACTED]>
Sent: Wednesday, July 22, 2020 8:44 AM

[REDACTED]

[REDACTED]

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

Greetings grossly corrupt SEC et al
Still MORE SEC facilitated fraud on the public it is mandated to protect:
BLNK: Farkas/JMJ/Jaclin/CFO New(NETE) money laundering fraud
today's pr

<https://www.globenewswire.com/news-release/2020/07/22/2065815/0/en/Blink-Charging-Awarded-Grant-from-Virginia-Clean-Cities-to-Place-200-Fast-Level-2-Charging-Stations-Across-the-Mid-Atlantic-Region.html>

Of course, BLNK didn't file an SEC reviewed 8K for this material, definitive agreement that has the stock up 27% on 5x normal volume at 10:30 EST

In fact, the last filing with the SEC by BLNK was actually the SEC declaring effective a public offering of securities on 7/15/20. 1 week ago today.

MORE SEC facilitated fraud on the public.

Cheers!
Christopher J Dilorio
Whistleblower

[REDACTED]
[REDACTED]

From: Chris Dilorio <[REDACTED]>

Sent: Tuesday, July 14, 2020 3:31 PM

[REDACTED]

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

OH JOHNNY!

<https://www.reuters.com/article/bc-finreg-fbi-laundering-private-equity-idUSKCN24F1TP>



FBI concerned over laundering risks in private equity, hedge funds - leaked document - Reuters

The U.S. Federal Bureau of Investigation believes firms in the nearly \$10-trillion private investment funds industry are being used as vehicles for laundering money at scale, according to a leaked ...

www.reuters.com

Janey,

Even though you admit not distributing my information within the SEC, I was busy distributing it myself to others.

Carl baby, I'm afraid this means your first "investigation" of my complaints to you wasn't exactly "thorough" as I've been saying for years.

Shall I point out the pages for you?

Blackstone wanted to buy NITE but only AFTER their SEC/JEF et al orchestrated August 1 2012 "glitch" "luckiest f'ers" on the Street

<https://www.businessinsider.com.au/blackstone-dodged-a-bullet-with-knight-capital-2012-8>



WHEW: Blackstone Almost Bought Knight Capital Before Its Stock Collapsed

One company is breathing a sigh of relief after a trading glitch sent shares of Knight Capital Group from more than \$10.30 to nearly \$2.50 last week.

www.businessinsider.com.au

From my TCR you admit never distributing Janey

<https://www.reuters.com/article/us-wealth-summit-ubs-blackstone-idUSTRE6A055020101101>



UBS brokerage's McCann sees more Blackstone ties - Reuters

UBS , rebuilding a brokerage hard-hit by the financial crisis, lately has been mingling in some good company: Blackstone Group LLP.

www.reuters.com

The UBS award application I sent to Janey TEN TIMES from a commercial fax machine:
ALSO MY INFORMATION

<https://www.sec.gov/enforce/34-84828-s>

SEC.gov | SEC Charges UBS Financial Services Inc. with Anti-Money Laundering Violations

ADMINISTRATIVE PROCEEDING File No. 3-18931. December 17, 2018 - The Securities and Exchange Commission today announced settled charges against broker-dealer UBS Financial Services Inc. for failing to report suspicious transactions in customer accounts. UBS agreed to pay a \$5 million civil penalty to resolve the SEC's charges, and separately agreed to pay \$10 million to the U.S. Treasury ...

www.sec.gov

y'all are gonna be FAMOUS!

Cheers!

Christopher J Dilorio

Whistleblower

From: Chris Dilorio <[REDACTED]>

Sent: Tuesday, July 14, 2020 12:34 PM

[REDACTED]

[REDACTED] <[REDACTED]>

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

MORE SEC corruption/obstruction
ANOTHER Jaclin money laundering shell:

https://www.sec.gov/Archives/edgar/data/1449527/000121390008002174/fs1_prcomplete.htm

YESDtc Holdings fka PR Complete

<https://www.sec.gov/cgi-bin/browse-edgar?CIK=1449527>

MORE related entities to my claims:

Bill Scigliano: Chairman BoD

Scigliano was also a Director at Oleg Firer's revoked but still very much up and running in MA: Acies Corp. Acies was incorporated by His Eminence with a NY address of 14 Wall Street: Rovt: Allied Wallet: WireCard. Jaclin and Oleg related entities/people: Money laundering shells. Is the grossly corrupt SEC regretting their Jaclin complaint which was a cover up for much larger criminal activity: MY CLAIMS?

But there's more.

The SEC also brought "more coverup than complaint" In Frost,Honig,Alpha,Stetson et al. The SEC Knows who else was involved in the Jaclin money laundering shell PRComplete/YESDtc:

Barry Honig/GRQ

<https://www.sec.gov/Archives/edgar/data/1449527/000152153612000023/0001521536-12-000023-index.htm>

So, Jaclin money laundering Shells and Honig too?

Gee, maybe Bag Men Honig, Keener, Scigliano etc KNEW these were money laundering shells?

Who was the executing BD/MM converting all these billions of worthless Jaclin,Ironridge,JMJ,Farkas,Honig etc etc certs into real money?

The SEC response: "penny stock trading fairies". NOPE: NITE

How is it possible that there is NO reference to AML in ANY of these SEC complaints?

Because the SEC outsourced BD compliance with the BSA to industry advocate FINRA. DUH

Then, there's the Jaclin money laundering shell New Image/BLNK. Gee, wonder if Farkas of money laundering shell Skyway, JMJ/Keener: money laundering shells in my claims, Engel: Drexel, Jonathan New NETE CFO, etc knew BLNK was/is a money laundering shell too.

His Eminence Firer is a prolific Bag Man. I've been telling the SEC that for years.

Janey, update my NETE and AQR TCR's. You know, for the record. Several entities in my TCR's linked to Jaclin's shell factory. Including NITE.

I've asked this many times Janey, Jay, Hoecker et al:

WHAT EXACTLY DOES THE NITE COMPLIANCE DEPARTMENT DO EXACTLY?

Other than looking the other way while they naked short publicly traded shells to facilitate money laundering that is

Cheers!

Christopher J Dilorio

Whistleblower

[REDACTED]

[REDACTED]

From: Chris Dilorio <[REDACTED]>

Sent: Monday, July 13, 2020 10:50 AM

[REDACTED]

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

Janey, Hoecker, Jay et al

still MORE SEC attempts to cover up illegal activity at the expense of the public it is mandated to protect.

The SEC latest Rule change proposal

<https://www.sec.gov/news/press-release/2020-152>

SEC.gov | SEC Proposes Amendments to Update Form 13F for Institutional Investment Managers; Amend Reporting Threshold to Reflect Today's

Equities Markets

The Securities and Exchange Commission today announced that it has proposed to amend Form 13F to update the reporting threshold for institutional investment managers and make other targeted changes.

www.sec.gov

Will exempt 90% of current 13F filers from future equity holdings disclosures.

WHO does that benefit? Certainly not the public the SEC is mandated to protect. LESS transparency still for the likes of Keener, Sason, Asher/Kramer, IBC, Ironridge/Coulston, Alpha, Dutchess, Crede, etc etc etc

Costs to file: pocket change

<https://www.netacn.com/Service.aspx?id=dLfmwmZHCKOsIL-sP3V8Dw>

Form 13F EDGAR Filing Agent Service :: Advisor Consultant Network

ACN will compile your 13F Report and act as your Filing Agent in order to submit the report to EDGAR.

Send us your Holdings List, we compile the Form 13F Report and send you a Proof for your review and approval. Upon your approval we will submit the report to EDGAR. You will receive an email notification as will ACN that the report has been accepted.

www.netacn.com

So, WHY does the SEC want LESS transparency for the investing public it is mandated to protect?

The SEC is bought and paid for by criminals.

Cheers!

Christopher J Dilorio

Whistleblower

[REDACTED]

From: Chris Dilorio <[REDACTED]>

Sent: Wednesday, July 8, 2020 9:35 AM

[REDACTED]

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

Janey, Hoecker et al,

Is Trump prolific Bag Man Jonathan Farkas related to Bag Man Michael Farkas: Skyway largest shareholder:
REVOKED

<https://www.hollywoodreporter.com/rambling-reporter/inside-hamptons-fundraisers-netted-trump-12m-election-1230690>



Inside the Hamptons Fundraisers That Netted Trump \$12M for Re-election | Hollywood Reporter

The numbers are in and President Donald Trump's quick trip to the Hamptons on Friday raked in \$12 million for his re-election campaign as his Republican allies were quick to declare it a win ...

www.hollywoodreporter.com

Now Michael Farkas is CEO of Jaclin money laundering shell New Image Concepts/Blink charging
How did Farkas (Michael) escape the SkyWay SEC complaint?

<https://www.sec.gov/litigation/complaints/2009/comp20960.pdf>

Would explain the Milken/Drexel flunkie Engel on the BLNK BoD as well.

Also explains why the grossly corrupt SEC let Bag Man JMJ/Keener up and running in 2020 and the Crede/Milken/Putin etc NETE CFO New now CFO at BLNK

Some BLNK/Trump/rinsing. With help from "issuer/bag man funded research" Zacks aka Seethroughequities 2.0. Russian money?

Cheers!

Christopher J Dilorio

Whistleblower

From: Chris Dilorio <[REDACTED]>

Sent: Tuesday, July 7, 2020 6:09 AM

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

Janey,

MORE EXTRAORDINARY SEC corruption and criminal obstruction designed to protect criminals and screw whistleblowers like me. Despite my very generous 4 day offer to produce the entire record which is the basis of my award application/denial/appeal AND REQUIRED by the statute I have referenced:

240.21F-12 "Materials that may form the basis of an award determination and that may comprise the record on appeal", The several hundred e mails I have sent you, Hoecker et al MUST be part of this record. Janey, you failed to produce this record. As I made clear: my 6/23/2020 emails to you Hoecker, SEC commissioners were merely re re re sent previously sent e mails: the record. Further, my 6/23/2020 e mail: Formal appeal for preliminary denial covered action 2015-016 Knight Capital & Appendix was merely a summary of several hundred e mails sent to you, Hoecker et al. These e mails SHOULD be the record. You failed to produce the record. Which begs the question: WHAT "record" was used to determine the SEC preliminary denial exactly IF the SEC can't produce the record? The preliminary denial was completely fabricated and must be reversed. But, it doesn't end there: per my 6/23/2020 summary based on several hundred e mails sent to the SEC, the RECORD of EXTRAORDINARY corrupt obstruction designed to protect criminals and screw whistleblowers is not confined to Opco,NITE,UBSS,Sason,Keener etc etc etc. I have filed 2 TCR's with the OWB related to the money laundering/transaction

laundering/Putin/Rakishev/Trump/Kushner/Alfa/Crede/Peizer/Milken/Hapoalim/SBNY/CardWorks/ESQ/WireCard/AQR etc etc etc fraud known as Net Element. For YEARS the SEC has been in possession of not just my TCR's but HUNDREDS of e mails supporting my TCR's comprising the extensive record. Here again, the SEC is covering up a MASSIVE fraud perpetrated on the public and well within even the grossly corrupt SEC ability to shut down the fraud IF they had used my information to execute its mandate to do so. Instead, the SEC obstructed a thorough investigation. Per my previous e mails: the record: NETE claimed to be a payment processing entity. Claiming further to process BILLIONS of dollars worth of transactions every year. Its subsidiary Pay Online is linked to the massive fraud Wire Card. How's the SEC Wire Card investigation coming along? For years, based on my extensive financials research and other research, I pleaded and pleaded with the SEC to shut down this massive fraud. They did not. email after email. Year after year I wrote the SEC "NETE is a money laundering/transaction laundering fraud". Rather than shut it down, the SEC with the help of NASDAQ allowed fraud public offerings by Crede/Peizer/Milken related entities: Esousa and Cobblestone and a reverse split so NETE could keep its NASDAQ listing. The balance sheet has been grossly insolvent for years: goodwill.

ALL of my allegations were confirmed when NETE decided to "unlock value in its payment processing" business by doing a reverse merger with a CA EV "manufacturer" started by a musician. This fraud transaction is quite common in money laundering shell land dominated by NITE/VIRT. The SEC cover up of criminal activity while screwing whistleblowers:ME: The "payment processing business" is to be "sold". Related of course was the SEC cover up of criminal activity while screwing whistleblowers: ME: The Goldman/Sull Cromm advised purchase by ALLY of CardWorks: Merrick Bank: NETE and then the recent unwinding of this fraud transaction. No doubt the brain child of Chair Clayton and his Sull Cromm colleague Jared Fishman who has played a key role in keeping the criminal entity NITE/VIRT up and running.

NETE/Mullen: "here glitchy glitchy" cover up. But, who the hell would EVER touch the massive fraud: NETE? Only another fraud: Mullen.

Mullen doesn't "manufacture" ANYTHING. Mullen is simply a car dealership.

The K50 EV is manufactured in China by Qiantu a subsidiary of CH-Auto. Qiantu/CH have a production facility in China. There will be no Mullen "production" of EV vehicles in Washington or anywhere else in the US.

But, the SEC facilitated fraud doesn't end at protecting criminals and screwing whistleblowers: ME. Per my TCR attached, there is a well orchestrated eco system of fraud. Including "issuer/bag man funded research" that

facilitates P&D. In fact, on 11/8/2018 the SEC brought a complaint against an entity I cited in 1 of my emails to the SEC: the record: known as SeeThroughEquity

<https://www.sec.gov/litigation/complaints/2018/comp-pr2018-259.pdf>

Seethruequity, LLC, Ajay Tandon, and Amit Tandon

THE DEFENDANTS 6. SeeThruEquity, LLC is a Delaware limited liability company that was co-founded in 2011 by brothers Ajay Tandon and Amit Tandon.

www.sec.gov

SeeThroughEquity was engaged in a Pump and Dump promotion of NETE in April and August 2018

<https://www.netelement.com/press-releases/release-content/1062906#.XwRXEOWSnIV>



SeeThruEquity Issues Update on Net Element, Inc.

NEW YORK, NY / ACCESSWIRE / April 10, 2018 / SeeThruEquity, a leading independent equity research and corporate access firm focused on smallcap and microcap public companies, today announced that it has issued an update on Net Element, Inc. (). The note is available here: NETE April 2018 Update Note. Net Element, Inc. (NASDAQ: NETE, "Net Element") is a global financial

www.netelement.com

<https://www.netelement.com/press-releases/release-content/10734671#.XwRXGuWSnIV>



SeeThruEquity Issues Update on Net Element, Inc.

NEW YORK, NY / ACCESSWIRE / August 6, 2018 / SeeThruEquity, a leading independent equity research and corporate access firm focused on smallcap and microcap public companies, today announced that it has issued an update on Net Element, Inc. (). The note is available here: NETE August 2018 Update Note. Net Element, Inc. (Nasdaq CM: NETE, "Net Element") is a global financial

www.netelement.com

So, the SEC SeeThroughEquity complaint acknowledges the fraud associated with NETE. Well orchestrated. This P&D campaign was part of the 2 fraud offerings : Esousa and Cobblestone: I alerted the SEC to. Who PAID for the SeeThrough P&D? Crede/Peizer/Esousa/Cobblestone?

The cherry on top of the SEC corrupt obstruction: NETE was still in business in 2020 to receive taxpayer Cares Act money.

A summary of the record.

Janey, Hoecker et al,

Please update my Net Element and AQR TCR's

Cheers!

Christopher J Dilorio

Whistleblower

[REDACTED]

Not just irony but a massive fraud on the

From: Chris Dilorio <[REDACTED]>

Sent: Tuesday, June 30, 2020 1:01 PM

[REDACTED]

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

Janey,

the purpose of your 5 years in the waiting PRELIMINARY denial of my OpCo Award application could not be any more clear: run the clock out and protect NITE,UBSS,Magna et al while denying me rightful compensation. But, As I have repeatedly told you, Hoecker, your colleagues: the last overt act of this vast conspiracy has not yet occurred:

NITE/VIRT is insolvent today 6/30/2020 as a direct result of the SEC facilitated fraud on the public which is and always has been the core business at NITE/VIRT: Abusive naked shorting publicly traded shells to facilitate money laundering. The public is STILL at risk. The SEC has facilitated NITE intentionally misleading the public as to the true nature of its business. The SEC still facilitates this massive fraud on the public while it intentionally misleads the public there is no naked shorting because the SEC authorized the DTCC to create the illegal, shadow clear mechanism Obligation Warehouse (OW) so NITE's criminal activity can continue and it can circumvent close out REQUIREMENTS of Rule 204 of Reg SHO. ALL very much ongoing in June 2020 as a direct result of the SEC (OWB/Hoecker/Enforcement etc etc) criminal obstruction and ACTIVE facilitation of the criminal enterprise known as Knight/KCG/VIRT: NITE.

Clayton never disclosed his Sull Crom/Fishman/NITE conflicts. He must step down from the SEC IMMEDIATELY until a criminal investigation can be concluded. NITE must be halted IMMEDIATELY as it still poses a monumental risk to the investing public. FINRA should go back to being a cheerleader as it is just another enabler of this criminal activity. It has NO business enforcing SECURITIES LAWS. It should not be overseeing the OTCM. FINRA fines are a joke and not meant to be a deterrent. INTENTIONALLY siding with criminals over the investing public the SEC is mandated to protect. The cesspool known as the OTCM MUST be shut down. It exists SOLELY for the purpose of facilitating a massive fraud on the public. The OW must be shut down IMMEDIATELY so the public can see just how pervasive naked short selling: MANIPULATION really is. EVERYONE at the SEC who has had contact with my information MUST resign/be terminated IMMEDIATELY. ALL of the AQR blank

EFTA00040317

check shells must be shut down IMMEDIATELY as they pose a serious national security risk. AQR MUST be shut down IMMEDIATELY.

Certainly not exhaustive BUT a good start

Cheers!

Christopher J Dilorio

Whistleblower

From: Chris Dilorio <[REDACTED]>

Sent: Tuesday, June 30, 2020 7:36 AM



Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

Janey,

please add the following info to my appeal of your preliminary denial of my Opco award.

More evidence the SEC is using/has used my information to both bring complaints and protect/obstruct complaints. Again, you, McKessy, Hoecker have been in possession of my 2013 TCR filed with Berger for several years. In addition to hundreds of e mails continuing into 2020 showing irrefutable and overwhelming evidence to support my allegations.

Highlighted in my attached TCR and related to my Opco Award application: Joshie Sason/Hanover/Magna: CGFIA, IMDS, NewLead, FreeSeas, PRTH etc etc etc. The SEC Sason/NewLead complaint is also my information as I filed separate but related NewLead, and FreeSeas TCR's with your office. The SEC complaint: Sason assignments: bogus notes. NO SHIT? Really? detailed by me. In addition to Bag Man Sason/Hanover/Magna, I detailed the illegal activity of Bag Man Justin Keener/JMJ in my 2013 TCR. Keener was the customer in the FINRA World Trade Financial complaint.

<https://www.finra.org/media-center/news-releases/2013/finra-fines-three-firms-900000-inadequate-anti-money-laundering>

FINRA Fines Three Firms \$900,000 for Inadequate Anti-Money Laundering Programs | FINRA.org

WASHINGTON - The Financial Industry Regulatory Authority (FINRA) announced today that it has fined three firms a total of \$900,000 for failing to establish and implement adequate anti-money laundering (AML) programs and other supervisory systems to detect suspicious transactions.

www.finra.org

Related to the billions of OTCM money laundering shells traded through World Trade, the BD SRO FINRA requested information from Keener related to his assignments and acquisition of bogus convertible notes including bank statements to prove the notes weren't bogus. Keener told FINRA to 'F Off'

https://www.finra.org/sites/default/files/OHODecision/p182993_0_0.pdf

FINANCIAL INDUSTRY REGULATORY AUTHORITY OFFICE OF HEARING OFFICERS

5 distributions of securities in violation of Section 5 of the Securities Act of 1933. Tr. 158, 179-180.6 On September 22, 2011, FINRA staff served a request on Keener, pursuant to FINRA

www.finra.org

FINRA barred Keener/JMJ in 2013 as a "Bad Actor"

The SEC was certainly aware of the FINRA action

<https://www.sec.gov/litigation/opinions/2012/34-68014.pdf>

As recently as 2019 Bag Man Keener/JMJ was involved in ANOTHER money laundering shell called Blink Charging fka New Image Concepts

<https://www.sec.gov/cgi-bin/browse-edgar?>

[action=getcompany&CIK=0001429764&owner=exclude&count=40&hidefilings=0](https://www.sec.gov/cgi-bin/browse-edgar?action=getcompany&CIK=0001429764&owner=exclude&count=40&hidefilings=0)

<https://www.sec.gov/Archives/edgar/data/1429764/000114420419004046/0001144204-19-004046-index.htm>

EDGAR Filing Documents for 0001144204-19-004046

Blink Charging Co. (Subject) CIK: 0001429764 (see all company filings) IRS No.: 030608147 | State of Incorp.: NV | Fiscal Year End: 1231 Type: SC 13G/A | Act: 34 ...

www.sec.gov

New Image Concepts was detailed by the SEC in their Jaclin et al "Shell factory" complaint in 2016. PRIOR to Keener involvement.

<https://www.sec.gov/litigation/complaints/2016/comp-pr2016-86.pdf>

Case No. 2:16-cv-03250

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 Case 2:16-cv-03250 Document 1 Filed 05/12/16 Page 1 of 45 Page ID #:1 AMY JANE LONGO, Cal ...

But Keener not the only 1 involved who knew New Concept was a money laundering shell.
CEO of Blink is Michael Farkas. SEC knows him well from his Skyway Communications days.
The SEC revoked the registration of Farkas/Skyway in 2007

[https://www.sec.gov/cgi-bin/browse-edgar?
action=getcompany&CIK=0001128723&owner=exclude&count=40&hidefilings=0](https://www.sec.gov/cgi-bin/browse-edgar?action=getcompany&CIK=0001128723&owner=exclude&count=40&hidefilings=0)

The CFO of Blink is Jonathan New. Formerly CFO of the AQR/Crede: Milken money laundering/Transaction
laundering blank check shell: Cazador/Arco: Net Element

A director of Blink is a guy named Donald Engel who worked at Drexel with Milken.
New Concepts was HQ'd in Santa Monica: Milken

But it gets better

the Jaclin shell factory also linked to Honig, Stetson, Alpha Cap, Frost as well

<http://www.teribuhl.com/2019/08/06/honigs-shell-factory-attorney-gregg-jaclyn-barred-as-sec-lawyer/>



Honig's Shell Factory Attorney Gregg Jaclin Barred as SEC lawyer - TERI BUHL

Your Voice. High Times Admits SEC Filing is Wrong: Stormy Simon
off the Board - L.A. Cannabis News on Text messages show
Cannabis investors Defrancesco & Serruya allegedly Colluded
with Clarus Securities' Christodoulis in Multiple Stocks; High
Times Admits SEC Filing is Wrong: Stormy Simon off the Board -

www.teribuhl.com

Where the SEC said multi billionaire Frost risked ALL to make a few million. NO, Frost, Alpha (also in my attached
TCR), Stetson, Honig were LAUNDERING. Frost bought Ladenburg from Milken flunkie Icahn AFTER Icahn rolled
Gruntal int Ladenburg. Gruntal: Icahn, Sater, SAC, Feinberg et al: Milken

The SEC intentionally omitted a Honig/Stetson shell from this complaint:

Millenium Bio/Inergetics

linked to Trump Cleveland fundraiser and healthcare fraud felon: Brian Colleran

In typical SEC "cover up", revoked the Millenium/Inergetics registration in 2019.

[https://www.sec.gov/cgi-bin/browse-edgar?
action=getcompany&CIK=0000072170&owner=exclude&count=40&hidefilings=0](https://www.sec.gov/cgi-bin/browse-edgar?action=getcompany&CIK=0000072170&owner=exclude&count=40&hidefilings=0)

Finally,

SEVEN F'n Years AFTER FINRA barred (not exactly) Keener/JMJ and my Berger TCR filed with your office Janey,

The SEC is going after Keener/JMJ related to my information AGAIN

17.5 BILLION shares of money laundering penny stocks.

<https://www.sec.gov/litigation/litreleases/2020/lr24779.htm>

Justin W. Keener d/b/a MJM Financial (Release No. LR-24779; Mar. 24, 2020)

WHO was/were executing BD's/MM's in these billions of shares of worthless Keener/JMJ money laundering shells????

What are odds that bogus note/worthless certs/assignments Sason/Magna would be involved with bogus notes/worthless certs/assignments Keener/JMJ in money laundering shells like IMDS and CGFIA etc) AND CGFIA was detailed by me to the SEC/FINRA AND CGFIA was 1 of the shells in the FINRA Opco AML complaint AND where NITE and UBSS traded billions of shares of CGFIA AND where NITE and UBSS traded billions of shares of IMDS also Now, what are the odds of all of that?

All you have to do is read my attached TCR Janey.

Cheers!

Christopher J Dilorio

Whistleblower

From: Chris Dilorio <[REDACTED]>

Sent: Tuesday, June 23, 2020 4:11 PM

[REDACTED]

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

small typos/corrections:

Mirror trade activity peaked in 1H2014 not 2H2014 and this coincides with OTCM astronomical share volume data in 1Q2014 and 2Q2014 that were expunged from KCG 10Q SEC filings. Not 2Q2014 and 3Q2014 SEC reviewed 10Q's as I previously stated

corrected below

Chris

From: Chris Dilorio <[REDACTED]>

Sent: Tuesday, June 23, 2020 9:48 AM

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

Ms Norberg,

I am in receipt of the SEC OWB correspondence allowing me more time to respond to the preliminary denial of my award application for the Oppenheimer 2015 covered action. This e mail was the last 1 I sent to your office related to my appeal. It will serve as the basis of my appeal. Including the attachments of my 2013 TCR submitted with Berger Montague to the SEC. I will also forward correspondence from 2012 and following detailing my extensive correspondence with Robin Traxler at FINRA as well as Sean McKessy in the OWB. Even though, I have previously forwarded your office as well as the SEC IG office the exact same corroborating evidence. My response to you will be lengthy and detailed. However, given that it took your office FIVE YEARS to send me a preliminary denial notice, that is understandable and in fact a result of YOUR lengthy delay in notifying me. ALL of my response pertains to the denial appeal at hand.

In 2011, I filed my first Whistleblower complaint with the SEC. Detailing a massive fraud on the public directly implicating dozens of entities. The center of my claims: Knight/KCG/VIRT: collectively NITE and the Swiss banking giant UBS:UBSS. By far, NITE was and still is today the largest MM/executing BD in the OTCM space. I was shocked to find the Swiss banking Giant UBSS was trading many of the same stocks as NITE and to the extent they were. This came on the heels of the FINRA UBSS Reg SHO complaint where the extent of the UBSS activity "threatened to undermine the integrity of our markets" while the SEC analysis of this activity was simply a case of "sloppy record keeping". My experience as an Institutional Sales trader: executing multi million share equity trades for the largest institutions in the world like Fidelity and Putnam. In addition, as a Research Sales person: analyzing financial statements and making investment recommendations formed the basis of my expertise. In fact, the SEC OWB has paid out awards for information just like mine. In August of 2011, I informed the SEC that NITE was insolvent having reported just \$105 mil in working capital at June 30, 2011. AND, for the reasons cited in my TCR detailing massive accounting fraud as a direct result of illegal naked shorting/self clearing/reverse splits/cusip changes etc. The SEC had a choice: investigate these extremely serious allegations and shut down this massive fraud on the public OR cover up their failure and allow this massive fraud on the public to continue. Unfortunately for the American public the SEC is mandated to protect, the SEC chose the latter. As a direct result, ALL of the activity detailed by me in this TCR and other TCR's filed with the SEC as well as 9 years of additional correspondence with the SEC, this is very much an ongoing, massive scheme. One that the SEC actively facilitates. Countless losses have been incurred as a result. NITE as I detailed is in a constant state of insolvency. The SEC has time and again intentionally misled the investing public that there is no abusive naked shorting. NITE is still in business TODAY.

The core business at NITE is and always has been: abusive naked shorting OTCM shells to facilitate money laundering. Not DMM, FCM, reverse mortgages, or even HFT. This illegal business is EXTREMELY profitable and virtually riskless. AND, both the SEC and FINRA know this. In 2016, FINRA brought a Rule 204 complaint against NITE. The fine was pathetic and not meant to be a deterrent. This is WHY the OTCM exists. But it's not JUST OTCM as my AQR TCR filed with the SEC clearly proves: NASDAQ Blank check shells as well. I have also filed separate TCR's related to NewLead and FreeSeas: 2 massive money laundering shells which began on NASDAQ, de listed to the OTCM. NONE of the activity detailed in the Opco/Gibraltar complaint takes place without a willing executing BD/MM who ultimately turns worthless certs into real money. That #1 trader is

NITE. As you read in my Knight TCR CGFIA is at the heart and, because it was based in Colorado, became a template of sorts for my extensive research. See Ms Norberg, unlike the SEC "investigators" on the OpCo/Gibraltar complaint, I've actually seen first hand the CGFIA "world HQ" as well as the rented Littleton home of CGFIA CEO Guyer. I've done extensive research on Properties claimed to be owned and M&A transactions done for the sole purpose of cert printing and distribution (Aurelio AMNP) where the ultimate acquisition amounted to a distributor of Ukrainian folk music. I've also done extensive research on domestic and foreign financial institutions claiming to "invest" in these scam companies like Josh Sason/Hanover/Magna also cited in my 2013 Berger/Knight TCR linked. So, as I detailed to Ms Traxler, I followed Guyer to Neuchatel Switzerland and his previous endeavor: Antelope Technologies also with an office in Highlands Ranch CO. Where I discovered a connection to Swiss/German individuals/entities that were also related to another OTCM shell in the OpCo/Gibraltar complaint as well as my Knight TCR: AppTech. Offices in the Woodlands TX and Boca Raton. AND very much up and running today. SHOCKING. The SEC OpCo/Gibraltar complaint is based on the FINRA complaint. That is absolutely irrefutable. As the Gibraltar complaint alleges just 1 OTCM shell and just a million shares while Commissioners Stein and Aguilar referenced BILLIONS of shares in their OpCo waiver dissent. Who executed those BILLIONS of shares? Was OpCo even a MM? If I ask a question it's typically a rhetorical: I know the answer. The SEC knows the answer also. The SEC OpCo complaint does not mention the executing BD/MM. The SEC complaint doesn't mention Sason/Hanover/Magna either. The SEC complaint makes no mention of illegal naked shorting which is clearly evident in the CGFIA 10Q referenced below. THIS IS MY INFORMATION. So, why aren't NITE, Hanover/Magna and UBSS implicated in the SEC OpCo/Gibraltar complaint? What my TCR clearly and irrefutably proves: NITE was engaged in illegal activity both BEFORE and AFTER the SEC et al orchestrated August 1 2012 "trading glitch". So, the SEC bailed out a KNOWN criminal entity. Unfortunately for the investing public, the SEC has doubled down on facilitating this illegal activity into 2020. The "glitch". Knight was insolvent in August 2011. I told the SEC this. The "glitch" proved my allegations. Key point in my TCR: NITE inadvertently sent 4000 worthless securities to JPM to secure an emergency bridge financing as collateral. These were open, naked short fails that could not be covered/closed due to a cusip change (SEC/FINRA approved rev split) booked as an "asset"(receivable) due to self clearing: MASSIVE accounting fraud. Ironically, the "glitch" proved my allegations: despite claiming to have a "highly liquid balance sheet" NITE had to raise the entire amount of the "glitch". AND the ultimate "financing" was not collateral based. Rather a 50% discounted convert when the stock had already been crushed to \$3 OR \$1.50. ALL of the financing participants knew the NITE balance sheet was complete fraud. NITE also committed securities fraud in pledging those 4000 worthless securities as collateral to JPM: SCOTUS Rubin: pledging collateral to secure financing is an offer to sell. JPM looked the other way. As did the SEC. Further, I submitted my amended TCR with Berger in March 2013, In August of 2013, FINRA brought a penny stock AML complaint against OpCo. Sale of unregistered penny stocks. WHO ultimately executed the trades? 2008-2010. In July 2013, the "glitch" financing Gen Atlantic/Getco reverse merger with Knight to form KCG closed. The new CEO of KCG was Dan Coleman who ran Equities at UBSS during their Reg Sho and cross border activity. For UBSS, the DOJ (Acosta Downing et al) dropped their DPA in 2010. My claims: the FINRA OpCo/Gibraltar complaint clearly implicates UBSS criminal activity AFTER the DoJ dropped its UBSS x border DPA. This is what the SEC is protecting in the OpCo/Gibraltar complaint: NITE/UBSS/Hanover/Magna illegal activity.

Also in my Knight/Berger 2013 TCR: IMDS. A multi year money laundering shell kept up and running by the SEC. Also NITE,UBSS, and Hanover Magna. In addition to other entities like JMJ, Southridge, and Alpha Capital Anstalt. Alpha Capital Anstalt is very much in business today as a result of SEC obstruction while the SEC recently brought a complaint against JMJ for activity like that in IMDS even AFTER he was barred by FINRA. In IMDS, the SEC allowed 2 barred individuals (CEO/CFO) to do an offering that created 37 BILLION shares of IMDS at .0001 with Chinese Nationals before revoking the IMDS registration. What do you do with 37 billion shares of IMDS at .0001 when there are no bids below that? NOTHING. The stock never traded. The SEC orchestrated a NITE/UBSS/Hanover/Magna/JMJ/Alpha etc MASSIVE naked shorting to facilitate money laundering scheme

bailout so that the MASSIVE naked short position didn't need to be covered in the open market as is mandated by Rule 204. Thus insuring profits and not MASSIVE losses for NITE and UBSS.

I also filed separate TCR's for NewLead and FreeSeas. 2 "Greek shipping" money laundering shells started on NASDAQ and delisted to OTCM. NITE top trader in BOTH. Hanover/Magna in both. I contacted the KY Div of Mines and notified the SEC that these "transactions" were complete fraud. The SEC Feb 2019 complaint against Hanover/Magna is my information: Bogus obligations, assigned, converted to worthless certs. Then dumped on the public and converted to REAL money by the executing BD/MM:NITE. Who generates illegal trading profits by abusive naked shorting. Very symbiotic relationship. 1 of the Hanover/Magna entities was Gibraltar/Hanover. Somehow omitted from the SEC OpCo/Gibraltar complaint. In NewLead, then SEC White and Ceresney firm Debevoise did a "fairness opinion" of a Russian Nickel wire transaction where the NewLead CEO had back dated documents. That has been expunged from SEC reviewed filings. FreeSeas: a structured tax evasion/money laundering shell. Also involved Credit Suisse and Deutsche Bank. Both Debevoise clients. Both involved in the tens of billions Russian Mirror trade scheme. In addition to Hanover/Magna a Milken related entity Crede: Run by Milken/Drexel/Obstruction of justice/Parking: Terren Peizer and his felon partner Michael Wachs. This led me to Net Element NETE. Peizer again. This time with more AML red flags than be counted. Well known to the SEC through TWO of my separate TCR's. CEO is Oleg Firer. Firer former money laundering shell Acies shut down by the SEC while NETE was left up and running. Acies very much up and running also in MA. In NETE: NASDAQ. AQR Blank check shell. SEC allowed 2 offerings so that NETE could keep its NASDAQ listing. 1 was with entity Esousa: felon Wachs ex wife. 2nd was with Cobblestone: felon Wachs sister. I told the SEC. They still approved the offerings. I discovered AQR money laundering blank check shell activity doing research on NITE and Hanover/Magna. A top traded NITE OTCM shell was Cereplast. Another AQR blank check shell. Hanover/Magna/NITE/ and Alpha Capital Anstalt. Alpha is Liechtenstein based and controlled by Martin Schlaff: Austria/Israel. AlsoIMDS (w/Schlaff controlled Balmore) and the Frost/Honing/Stetson et al complaint. Schlaff also LH Financial/Wolfson/Sulphco and Bawag: Sedona/Scan Graphics: Refco: Naked shorting. NITE is Refco on steroids. Cereplast ended in bankruptcy.

NETE claims to be a "payment processor". BILLIONS in transactions processed. Never break even let alone profitable. Balance sheet complete fraud. AML red Flags: Firer is Grenada Amb to Russia living in Miami, Apockinas/Grinshpun/Antonov/Rakishev/Trump/Kushner/SBNY/CardWorks/Merrick Bank/ESQ/Cohen etc etc etc money laundering/transaction laundering BILLIONS shell. Kept up and running for years since filing my NETE/AQR SEC TCR's. ALL of my allegations proved accurate in 2020 when NETE received Cares Act taxpayer money then announcing it was "unlocking the value in its misunderstood payment processing business" by doing a reverse merger with a CA electric car company started by a former musician. The payment processing business to be "sold" and the new company (Mullen) will own 80-90%. All made possible by SEC obstruction and ACTIVELY facilitating illegal activity. Another AQR blank check shell is Astra/Phunware. More Greek shippers related to massive swindler Economou originally intended to do an "energy logistics company" acquisition and somehow settled on "mobile app developer" Austin TX: Phunware. PHUN CEO is well known to the SEC with shells going back 15 years. I alerted the DoJ and SEC that PHUN was a money laundering shell. In addition to the "genius quant" AQR, AIPAC: Gerber/Hudson Bay, Nordlicht: Ari Glass/Boothbay, 1MDB: Khazanah Nasional, Global Crown/Rani Jarkas/EFG/BSI/Optima/Max Fang. AG Barr 1MDB waivers: Kirkland also AQR. Broidy: Trump: 1MDB money laundering. PHUN also received Cares Act money. AND PHUN is Trump/Kushner/Parscale campaign mobile App. PHUN should have also been shut down long ago. AQR too. OTHER AQR blank check shells: CIS/Delta/Urban Tea, Ability/Cambridge, Hunter Maritime, and MI Acquisition/Priority Tech Holdings. Ability/Cambridge: Israeli cellular intercept/surveillance. Israel sent employees to jail. In the US it was "securities fraud". The SEC Ability/Cambridge complaint was handled by Ansu Banerjee in the SECLA office. Milken/Mogilevich/BoNY money laundering entity Sinex: Debasish Banerjee. WHY did SECLA have jurisdiction over ABILF/Cambridge? Result: ABILF is very much up and running today. I believe this is the PHUN/Trump/Kushner/Parscale mobile app technology.

Hunter Maritime:HUNTF: Never consummated an acquisition. Just cert printing/dumping. Also involved: Milken family office: Silver Rock. MI/Priority:PRTH. CEO Tom Priore: well known fraudster to the SEC. Also

transaction/money laundering like NETE. Also involved: Hanover/Magna.

ALL AQR money laundering shells up and running today thanks to the SEC. Only recently did the SEC revoke CGFIA and NewLead. well after going dark and the massive fraud on the public had already been perpetrated. In NewLead, FreeSeas, etc etc etc a common tool used is reverse splits to perpetuate and facilitate illegal activity. SEC/FINRA approved. The result is the massive accounting fraud at NITE. WHEN not IF there is an open naked short fail when a rev split takes place, a new CUSIP/security is issued. Trades in the old cusip/security cease. This creates a structural liability. The fail/short can NOT be closed. Like covering a short in AAPL with MSFT. Because NITE is self clearing it books a prop naked short as a receivable. An asset. But, because NITE won't or CAN'T deliver, massive accounting fraud. Literally a liability booked as an asset. This is how "glitches" are born. But the SEC facilitated fraud doesn't end there. The definition of a failed trade: 1 that hasn't settled. The SEC/DTCC issue new securities where trades in the old haven't settled yet AND not authorized by the issuer. Settlement: buyer brings cash/seller brings securities. The DTCC simply makes journal entries. But there are still "IOU's" in the system. The SEC authorized the DTCC to create a shadow clear, non guaranteed, ILLEGAL (clearly contrary to 34' Act "prompt and accurate settlement) Obligation Warehouse so criminals like NITE et al can circumvent close out REQUIREMENTS of Rule 204. The OW is just what it sounds like. Per my Knight TCR, DTCC suspends services (Chill/Lock) and trades are deemed "ex clearing". In a FOIA request made with POGO, Berger and I asked the SEC fails data on dozens of NITE/UBSS top traded stocks like CGFIA, APCX and IMDS. The SEC response: see our website. The SEC fails data is for DTCC cleared trades only. The SEC knows exactly the level of fails sitting in the OW. They don't disclose. Intentionally misleading the public there is no naked shorting. In 1Q2020, the receivable at NITE/VIRT increased \$1.2 BILLION sequentially. Up almost 90%. AND the tangible book value is grossly insolvent. When it comes down to it, there really isn't ANYTHING in the receivable that NITE can convert into cash for its own use. There are prior commitments on those "assets": SETTLEMENT of transactions. Because the SEC has never shut down this activity, NITE is in a constant state of insolvency.

Other examples of SEC attempts to cover up NITE illegal activity so that it can continue include:

Cerberus/Feinberg/VIRT bidding on NITE post "glitch". Wasn't their turn. First, Gen Atlantic needed to monetize its GETCO "investment". The HFT business at GETCO was in a death spiral when the rev merger took place. So what was the attraction to NITE? The business that had absolutely ZERO overlap/synergies: OTCM. As low tech as it gets. Literally a trader sitting in a chair. As I have asked the SEC on hundreds of occasions over the years: what would happen to NITE trading profits if their OTCM share volumes went to ZERO? Cerberus is Feinberg: Gruntal/Milken. Also bailed out Bawag:Refco, HSH, and Deutsche Bank (\$50 bil Bad Bank to Goldman). Another Milken/NITE connection is Rich Handler: Jefferies. Also a Milken/Drexel protege. Milken was Gruntal: Feinberg, SAC, Icahn, Sater etc. Gruntal was "sold" to Ladenburg. Controlled by Vector/NewValley: Icahn/Lorber/Elliman etc. And, was sold to multi billionaire Frost. Who, according to the SEC risked it all trying to "make" a few million when he, Honig, Stetson, Alpha et al were really LAUNDERING. Milken also Whiterock, D H Blair (Morty Davis) and AR Baron (Bressman/D H Blair) which was the precursor to Bear Stearns collapse. So, Milken and his merry crew of flunkies are really at the nexus of JUNK. They own Trump and his White House (Trump casino junk) and they own the SEC. It was Milken, Leon Black, Handler, Moelis, Virtue: Drexel that caused the S&L taxpayer bailout stuffing them with junk like Trump's. It is no coincidence that these same flunkies are also the largest CLO originators/managers. CLO's: Junk on steroids. AGAIN Bailed out by taxpayers in Cares Act HY. There also connections to Epstein. Treasury Sec Mnuchin and Black: HY/Junk/S&L's and Epstein. Black: Money laundering shell ESWW kept up and running by the SEC was/is an Epstein money laundering vehicle: JUNK IS JUNK.

THIS EXPLAINS the Handler/Jefferies/Milken repeated bailouts of NITE. It also explains the SEC criminal obstruction.

SEC Chair Clayton is also directly linked to this criminal obstruction. His firm Sullivan Cromwell and Jared Fishman are ACTIVELY facilitating this massive fraud on the public. Clayton did not disclose these conflicts in his disclosures. Sull Crom/Fishman have advised Knight/KCG/VIRT and several transactions designed to facilitate this ongoing and ongoing fraud on the public. Many of the same players involved in the "glitch" were involved in the VIRT acquisition of KCG in July 2017. In addition to Sull Crom/Fishman and Handler/Jefferies: JPM and

Goldman. The SEC facilitated fraud in the NITE/VIRT transaction is egregious illegal activity. The transaction NEVER should have happened. KCG was an SEC reporting company until the deal closed on July 31 2017. Despite this FACT, VIRT CEO Cifu refused to "publish" KCG 2Q2017 financials. I estimate Cifu/Coleman/Handler/GS/JPM wrote down more than \$4 billion in open naked short fails: "leverage". The SEC let him. Meaning: "assets" used to determine the take out/ tangible book of KCG was complete fraud. VIRT grossly OVER paid for insolvent KCG.

Prior to the NITE/VIRT transaction closing in July 2017, NITE would report its trading stats monthly. Including OTCM share volumes. Cifu stopped this post merger. The SEC let him. In fact, you will find NO reference to NITE/VIRT OTCM share volumes in any SEC reviewed filing, sell side research or investor presentation. A well orchestrated fraud on the public. Omissions to Intentionally mislead the public as to the true representation of the NITE/VIRT business model. These share volumes are also at the center of my 2013 Berger TCR. There are no affirmative disclosures in any SEC filings to this day as to the AML risks posed in trading these OTCM and other shells. In a 2014 letter to the SEC, I detailed the first 2 months of NITE OTCM share volumes. When the 1Q2014 10Q was filed, these volumes were confirmed: An ASTRONOMICAL increase sequentially as well as year over year. These share volumes/my letter/TCR SHOULD have triggered an immediate SEC investigation. It did not. This portion of the KCG 1Q2014 10Q was expunged as well as 2Q2014 OTCM share volumes. I have detailed this to the SEC/OWB/Enforcement/IG. In the months leading up to the NITE/VIRT closing in July 2017, KCG put out monthly trade stat pr's showing KCG trading more volume than the overall market. Also indicative of naked shorting. Those pr's were also expunged. I also including electronic forms to the SEC OWB/Enforcement/IG. The SEC has essentially outsourced the ENTIRE OTCM market to the Broker Dealer SRO FINRA. Including: management of the OTCM share volume website fka OtcBB.com. Today, there is very little transparency into trading activity by MM as a result. Also: ISSUER corporate actions: rev splits, Short interest reporting: an absolute farce given there is still no CAT. AND BD compliance with the BSA. Per my TCR: WHY did NITE and UBSS trade Billions of shares of CGFIA and IMDS AFTER a Chill or Lock was placed (ex clear/OW)? CLEAR AML red flags. Because they had an open naked short position. Why not pull a market? Because they had an open naked short position. SAR's? WHEN? BEFORE OR AFTER THEY TRADED BILLIONS OF SHARES? There were no SAR's either. NITE can not outsource its compliance responsibilities to 3rd parties (like OpCo) when executing trades as MM. In 2015 at a SIFMA conference, Ceresney was "shocked" by the number of BD's under his supervision filing 1 or ZERO SAR's. NITE SHOULD have been investigated for egregious BSA violations long ago based on my TCR. Knight/KCG/VIRT:NITE is and always has been a criminal enterprise. Spitzer Russian/US mob bust: "worthless paper". Ashton Tech became VIE became Optimark became Knight/Trimark NITE literally "made by the mob". The SEC has known this for years. ALL of the "worthless paper" shells were SEC reporting companies. Today, Trump PA Campaign Mgr David Urban sits on the NITE BoD. AND is also on the BoD of his very own money laundering shell: Canadian/Pakastani/pot/COVID: FSD Parma: HUGE. Trump advisers/campaign staff Bannon and Parscale also involved in OTCM money laundering shells.Parscale Cloudcommerce fka Roaming Messenger also receiving taxpayer Cares Act money.

Madoff: more money laundering than Ponzi. HOW THE HELL did the SEC let that scam go on for as long as it did? Criminal obstruction. The former SEC IG Kotz actually investigated his "bosses" at the SEC unlike current IG Hoecker. Years of SEC obstruction. Bullshit "investigations" into "running ahead" meant to distract. Similar to the SEC "glitch" "market access complaint" where former SEC "glitch" Enforcement Dir Khuzami/Kirkland(Barr) also rep'd NITE. Can't make this up. The center of IG Kotz scathing failure of the SEC in Madoff: SEC NY and Mr John McCarthy who ended up being Knight/KCG Chief Counsel. As I said: can't make this up. And, as we know Madoff started his career in NASDAQ penny stocks exactly like the 1's in the Spitzer/Mob complaint.

OTCM: This is WHY the OTCM exists: abusive naked shorting publicly traded shells to facilitate money laundering. CEO Cromwell Coulson CHAIRED the FINRA market Regulation Cmte. Say it with me: Can't make this shit up: CMTSU. A founding OTCM Board member is former NITE trader Andrew Wimpfheimer:CMTSU. This is a very well orchestrated and ongoing fraud on the public. Russian mirror trades: no SEC OR DOJ investigation HOW? According to stories: activity peaked in 1H2014. Coinciding with NITE astronomical OTCM 1Q2014 share volume increase. In addition to money laundering penny stock shells, the OTCM is also home to many ADR's.

Including Russian ADR's cited in the NYDFS/DBTCA/mirror trade complaint. Little/no disclosures. Also in my TCR: P&D is just a tool used to facilitate the fraud and NOT a stand alone fraud. The SEC intentionally stops short of thorough investigations into much bigger frauds. The same way it has the public believe the "penny stock trading fairies" convert worthless certs to real money. NO! willing executing BD's and MM's like NITE do that. Less than a year after filing my Knight TCR with Berger, FINRA (not the SEC) brought the BBH AML complaint. This was my information. Swiss banks, foreign/domestic institutions, executing BD's/MM's/ penny stock shells: \$850 mil in proceeds. Did BBH implicate NITE and other entities in my claims? WHY are all of the entities in the complaint UN NAMED? In the interest of transparency for the investing public? In 2019, I also filed an award application for the UBS x border/AML complaint. This is BLATANTLY my information. SEC/FINRA/ AND the SEC. I filed an IRS TCR based on my SEC TCR attached. In April 2016, 2 IRS CI Agents: VIKAS Arora and Nathan Sarnacki flew to Denver from Chicago to meet with me. I believe they were blown away. Then came the UBS complaint. As a follow up to our meeting, they wanted to know WHO at the SEC I shared my information with. I told them. That was the last I heard from them although I continued to send them my information.

To the SEC IG Carl Hoecker: In 2015 I parted ways with Berger as I was convinced the SEC was using my information in an unethical/illegal manner to both bring and obstruct complaints. Berger was not willing to file an IG complaint. After parting ways, I almost immediately did just that. Prior to retaining Berger I had filed an award application for the UBS Reg Sho complaint. In my submission and my correspondence with McKessy/OWB I made the claim based on OWB permissible rules to "open a new line of inquiry". One that would link the trading activity detailed in my ultimate TCR by NITE and UBSS. That link: Abusive naked shorting publicly traded shells and money laundering. My application was denied and there was no investigation into this link. The SEC had just bailed out a "known criminal enterprise":NITE "glitch" was not a forthcoming admission. Neither was the blatantly and knowingly false pretext for the DOJ dropping its UBSS x border DPA because "UBSS was in full compliance" in 2010. So, rather than open a new line of inquiry, the SEC chose to obstruct.

I made clear to Hoecker the egregious conflicts by Khuzami,White and Ceresney with clients UBS,JPM,CS, and DB. Hoecker claims to have conducted a "thorough" investigation of my very serious allegations and found nothing. Despite MJW waivers received to "investigate" her Swiss bank client CS. Then in 2019, Hoecker arrogantly told me I could file a FOIA request on his findings. Then, came 2019 and absolutely nothing had changed. NITE was still trading billions of shares of OTCM shells like ELTZ. There were still no risk disclosures. Cifu refused to publish KCG 2Q2017 financials, Hanover/Magna/AQR/Alpha/IMDS etc etc etc were still up and running . I filed ANOTHER complaint with IG Hoecker. Despite the fact that Hoecker himself wrote the IG handbook on "thorough investigations" mandating complainant interviews, I have never been interviewed by Hoecker. In addition, the IG Hoecker is mandated to inform Congress as to serious allegations like mine. He did not. In doing so, obstructed Congress from executing its oversight of the SEC/OWB. And despite hundreds of offers to fly to SEC HQ to have the best and brightest at the SEC rip apart my allegations 1 by 1 I have never been taken up on my offer. Why is that? The SEC OWB has gone to great lengths in other cases to explain the OWB process etc to whistleblowers. I have never been told "no thanks" for my information. In fact, McKessy has solicited MORE information from me after submitting my Berger TCR. In Madoff, an intern could have verified/shut down in weeks NOT years. No contra parties. Only a well orchestrated obstruction by SECNY/McCarthy et al kept it up and running. As I have also repeatedly told the SEC: My claims could be verified in weeks also. NITE has a P&L for every stock they trade. These, aggregated, are basis for quarterly trading profits. These P&L's, combined with OW data, and balance sheet data will validate ALL of my claims. I've offered my service to do exactly that. 2 weeks max. Afterall, proprietary trading strategies are NOT proprietary if they're illegal. For the reasons I have listed in this summary, NITE/VIRT is on the SEC "do not investigate list". And yes, there most definitely is such a thing. Especially when it comes to illegal activity facilitated by the SEC. So, the SEC denial of my OpCo award claim which was 5 years in the making is just another example of my very serious allegations: The SEC solicits and uses whistleblower information like mine to both bring and obstruct complaints. Unethical. Illegal. To deny my award application because the "investigators" didn't see my information is further affirmation of my allegations. They saw it. They used it. They denied my compensation for

it. Again Ms Norberg, I will forward my 2012 etc emails with Robin Traxler at FINRA as well as McKessy as further evidence that my Award application denial should be overturned. Further affirmation from 2 dissenting SEC Commissioners and the judge in the Gibraltar case makes this denial both egregious and bizarre. Bizarre ONLY if you believe that there is no SEC obstruction that is. BTW, crazy stuff going on with the firing of Mr Berman/Clayton nomination to take his place/Rabbitt to DoJ/Carpenito replacing Audrey Strauss/Trump/Barr don't you think? The SEC needs some fixers. Wonder why.

I'm cc'ing some of our mutual friends on this email Jane. The last overt act of this massive ongoing, SEC facilitated conspiracy has not occurred yet.

Cheers!

Christopher J Dilorio

Wistleblower

From: Chris Dilorio <[REDACTED]>

Sent: Wednesday, June 10, 2020 2:30 PM

To: [REDACTED]

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

Mr Roach,

The SEC is irrefutably using my information in unethical and illegal manner. My information is being used to BOTH Bring complaints AND obstruct/protect investigations into entities detailed in my various TCR's. Denying me rightful compensation. This is the latest example.....

Chris

From: Chris Dilorio <[REDACTED]>

Sent: Monday, May 18, 2020 10:36 AM

[REDACTED]

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

As straightforward as it gets:

The SEC OWB dragged its feet for 5 years in issuing its preliminary denial notice.

The SEC knows this is my information. The SEC committed fraud on the court in Gibraltar. The judge corrected them. The SEC was omitting information that implicated NITE, UBSS and customers like Sason/Hanover/Magna. The SEC was obstructing a thorough investigation of my claims. The naked shorting cited in the CGFIA 10Q in 2013 PROVES my allegations. The SEC's "targeted investigation" stops short of a full accounting. The SEC Gibraltar complaint does NOT explain the totality of the Oppenheimer complaint. The SEC Gibraltar complaint cites 1 OTCM shell and less than 1 million shares traded by Opco. 2 dissenting Opco waiver SEC Commissioners proved that also citing "BILLIONS" of shares in their dissent. The SEC/Opco AML complaint was based on the FINRA complaint and my information. The SEC OWB concocted a completely fabricated reason for denying my Award: "The SEC investigators involved never saw claimants information". The responsibility to distribute

Whistleblower information within the SEC is the exclusive and explicit responsibility of the OWB. As a result, the massive fraud taking place continued well into 2020. The 1Q2020 10Q proves this.

The SEC IG Hoecker is guilty of violating specific IG requirements in keeping Congress informed of serious matters like mine. The SEC IG Hoecker has never interviewed me despite my filing 2 separate complaints with his office. The SEC IG Hoecker is guilty of criminal obstruction. SEC Chair Clayton and Co Enforcement Peikin worked at Sullivan Cromwell with Jared Fishman. Fishman has played a key role in the SEC facilitated criminal obstruction. Peikin and Clayton should have recused themselves from ANY pending NITE/VIRT matter before the SEC: My information. Clayton and Peikin should have recused themselves from the SEC facilitated KCG/VIRT merger. My information, including the Opco AML complaint SHOULD have stopped the merger from ever happening. 2 former SEC Commissioners agree with that analysis. The SEC is actively facilitating a massive ,ongoing fraud on the American people they are mandated to protect. NITE/VIRT is a criminal entity. The SEC MUST invoke emergency powers and halt trading in VIRT IMMEDIATELY.

In short Mr Arp, the criminal activity actively perpetrated by the SEC OWB/IG must be referred to law enforcement as well as Congress. Separate but related: SEC facilitated criminal activity and my claims. The criminality is a matter for law enforcement. My pending matters with the SEC have no bearing on a criminal investigation OR a GAO investigation.

You are incorrect in your analysis.

I Urge the IG Integrity Board to have SEC IG Hoecker refute my claims point by point.

I will be on a plane tomorrow so he can do it in person.

Cheers!

Christopher J Dilorio

Whistleblower

[REDACTED]

From: Chris Dilorio <[REDACTED]>

Sent: Tuesday, May 12, 2020 8:54 AM

To: [REDACTED] <[REDACTED]>

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

Almost immediately I filed a formal appeal to the SEC OWB fabricated denial of my award application. In this appeal I show irrefutable proof of my allegations: The SEC OWB used/ is using my information to both bring complaints AND obstruct complaints while denying me compensation. In short: My information exposes an ongoing, massive in scope, SEC facilitated fraud on the American people. Rather than shut it down, the SEC has chosen to cover up so that the illegal activity can continue. It does in 2020

Chris

From: Chris Dilorio <[REDACTED]>

Sent: Monday, May 11, 2020 7:16 PM

[REDACTED]

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

From: Chris Dilorio <[REDACTED]>

Sent: Wednesday, April 29, 2020 8:03 AM

[REDACTED]

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

The SMOKING GUN in my allegations:

Naked shorting in CGFIA (My TCR/FINRA complaint) by "un named third party BD" in 2013. Well known to the SEC. This is why there was no investigation into the ENTIRETY of the FINRA trading activity. The SEC issued waivers to Opco within days of its AML complaint. WHO was the SEC protecting? WHO were the customers and executing BD's/MM's in the Opco complaint? ALSO well known to the SEC:

MY INFORMATION. 5 years to get a preliminary denial: statute of limitations. BUT the last overt act of this ongoing conspiracy has not yet occurred.

Chris

From: Chris Dilorio <[REDACTED]>

Sent: Wednesday, April 29, 2020 7:56 AM

[REDACTED]

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

Still more evidence of a well orchestrated scheme to cover up and obstruct a FULL SEC investigation into Opco/Gibraltar/NITE/UBSS trading activity in billions of shares of OTCM money laundering shells. The SEC used my information to bring AND obstruct complaints.

The 2 SEC Commissioners dissent in granting Oppenheimer waivers after this egregious activity

<https://www.sec.gov/news/statement/dissenting-statement-oppenheimer-inc.html>

SEC.gov | Dissenting Statement In the Matter of Oppenheimer & Co., Inc.

Dissenting Statement In the Matter of Oppenheimer & Co., Inc., by Commissioner Luis A. Aguilar and Commissioner Kara M. Stein, February 4, 2015

www.sec.gov

In fact, the SEC waivers came within days of their complaint. Here, these 2 Commissioners cite Oppenheimer trading "BILLIONS of shares of penny stocks". Clearly, they were not JUST referencing the SEC Gibraltar complaint. WHO was the SEC protecting with its complaint then waivers?

The smoking gun which I have provided to the SEC on several e mails:

Which came in an SEC reviewed CGFIA 10Q

https://www.sec.gov/Archives/edgar/data/1344394/000135448814000425/cgfi_10q.htm

cgfi_10q.htm - SEC

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

www.sec.gov

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"Our stock is subject to a "Global Lock" imposed by the Depository Trust and Clearing Corporation (DTCC)"
"On September 24, 2013, we were notified that the DTCC would be placing a 'Global Lock' on the Company's Class A stock as a result of actions by a third-party broker dealer. On November 11 2013, DTCC imposed the "Global Lock". Since less than 0.02% of the Company's Class A common stock shares were held within DTCC, Management chose to not undertake the expense of challenging the Global Lock. Nevertheless, shares that are held in street name (CEDE & CO), will not be able to be withdrawn from DTCC without further action."

Of Course, I have hard copies if you prefer.

ex clearing: The illegal SEC/DTCC Obligation Warehouse.

This is CLEAR, IREFUTABLE, INCONTROVETIBLE evidence of naked shorting by executing BD's in CGFIA. This activity took place per my Knight/UBSS TCR submitted to the SEC. So, WHY did the SEC obstruct an investigation into the ENTIRETY of the trading activity in the FINRA (and FINCEN) complaints? WHO were the executing BD's/MM's? WHO were the customers?

The veracity of my information is also irrefutable and incontrovertible.

Game. Set. Match. The SEC is a grossly corrupt, criminal enterprise facilitating illegal activity detailed by me so that this activity can continue. It does in 2020. The SEC solicits then uses Whistleblower information (MINE) to bring complaints AND obstruct other illegal activity while denying proper compensation to whistleblowers (ME). The SEC KNEW who the "third party BD" was in the CGFIA filing long before it filed its Opco complaint in 2015. It had my TCR in its possession in March 2013. So why did it take 5 years for the SEC to issue its preliminary denial? I would remind the SEC that this is very much an ONGOING conspiracy on the part of the SEC et al.

IN FURTHERANCE OF THE CONSPIRACY.....

Cheers!

Christopher J Dilorio

Whistleblower

From: Chris Dilorio <[REDACTED]>

Sent: Tuesday, April 28, 2020 7:24 AM

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

EFTA00040331

Per my extensive SEC TCR's: Josh Sason/Emanuel/Abitebol/Hanover/Magna extensive overlap with NITE/VIRT (and AQR) money laundering shells.

The SEC Sason/Magna/NewLead Feb 2019 complaint: also my information

<https://www.sec.gov/litigation/complaints/2019/comp24403.pdf>

Marc P. Berger SECURITIES AND EXCHANGE COMMISSION Brookfield Place
200 Vesey Street, Suite 400 New York, NY 10281-1022 SOUTHERN
DISTRICT OF NEW YORK JOSHUA SASON, MARC MANUEL,

3 5. In addition, Pallas acted as an underwriter for a primary offering of NewLead stock, which NewLead attempted to disguise as an asset sale transaction.

www.sec.gov

https://www.sec.gov/Archives/edgar/data/1322587/000114420413065095/v361773_sc13g.htm

www.sec.gov

(i) Sole power to vote or to direct the vote . The information required by Item 4(c)(i) is set forth in Row 5 of the cover page for each Reporting Person hereto and is incorporated by reference for each such Reporting Person.

www.sec.gov

MG Partners Ltd: Abitebol

But not in the complaint: MAGNA GIBRALTAR INVESTMENTS LLC: also Abitebol

As with Opco/GIBRALTAR, who is the SEC protecting?

AND, per my extensive correspondence with the SEC re my TCR's: The SEC is ALSO grossly under estimating the criminal activity in NITE/Magna/NewLead

SEC: Criminals bailing out/actively facilitating criminals/criminal activity.

soliciting/using whistleblower information in unethical/illegal manner to bring complaints/obstruct complaints/deny whistleblower rightful compensation.

Cheers!

Christopher J Dilorio

Whistleblower

From: Chris Dilorio <[REDACTED]>

Sent: Tuesday, April 28, 2020 6:43 AM

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

EFTA00040332

More evidence of SEC fraud on the court in Gibraltar.

It is CLEAR that the Opco AML Covered Action 2015-016 was NOT ENTIRELY based on the SEC Gibraltar Action. The SEC Gibraltar action covered trading activity in just 1 OTCM Money laundering shell: Magnum d'Or where Opco traded less than 1 million shares. CLEARLY the SEC Opco complaint was based on the trading activity in the FINRA Opco AML complaint: my information. However, the SEC Opco complaint even stops short of a thorough investigation of the ENTIRETY of the FINRA trading activity. WHY? WHY didn't the SEC Opco/Gibraltar complaint go into trading activity in the FINRA AML OTCM shells through 2014 as FINCEN did? WHY did the SEC omit MATERIAL information to the court in Gibraltar causing a "significant under estimating" of criminal activity? The SEC knows who the accounts were. The SEC knows who the executing BD's/MM's were. The SEC committed a fraud on the court in Gibraltar.

Gibraltar was ROLLING OUT NEW OTCM services into the end of 2011.

<https://www.pr.com/press-release/355246>

Gibraltar Global Securities Now Offering Offshore Brokerage Accounts - PR.com

Nassau, Bahamas, The, September 22, 2011 --()-- Gibraltar Global Securities is now offering offshore brokerage accounts in addition to their broad array of financial services. Gibraltar Global ...

www.pr.com

<https://www.pr.com/press-release/355247>

GGSI Bahamas is Now Offering Pink Sheet Clearance

Offshore Broker Adds to Buying and Selling Services

www.pr.com

<https://www.pr.com/press-release/369649>

GGSI Bahamas Provides State-of-the-Art Security for OTC PINK Transactions and Communication

GGSI (Gibraltar Global Securities Inc.) has just announced the release of their latest security measures designed to protect their client's personal data, and to secure electronic communication.

www.pr.com

The SEC KNEW the Gibraltar/Opco trading activity went well beyond 2011 YET cut off its investigation at "well into 2010". Thus, KNOWINGLY omitting material information in Gibraltar: FRAUD ON THE COURT. Confirming my allegations of SEC criminal activity in handling my information. WHY? to protect NITE and UBSS. 2 criminal entities bailed out by the SEC. Now, the SEC is using the completely fabricated reason for denying my award claim for covered action 2015-016: "The investigators never saw the claimants information".

WHEN the explicit and exclusive responsibility to distribute whistleblower information within the SEC falls on the OWB itself.

More criminal activity.

Criminals bailing out criminals while denying Whistleblowers due process and compensation.

Cheers!

Christopher J Dilorio

[REDACTED]

Whistleblower

From: Chris Dilorio <[REDACTED]>

Sent: Sunday, April 26, 2020 9:36 AM

To: [REDACTED]

Subject: Fw: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

From: Chris Dilorio <[REDACTED]>

Sent: Friday, April 24, 2020 8:18 AM

[REDACTED]

Subject: Formal appeal for preliminary denial covered action 2015-016/ Knight Capital TCR & Appendix

I am in receipt of the SEC preliminary denial of my award claim for the Oppenheimer AML covered action 2015-016

This is my formal appeal of the SEC preliminary determination.

My award application was based on this very simple FACT:

The SEC (and FINCEN) Oppenheimer AML actions were based on the FINRA Oppenheimer AML action

FINRA

https://www.finra.org/sites/default/files/fda_documents/2009018668801_FDA_KMX39652.pdf

of - FINRA

which is FINRA a party, to the entry of findings and violations consistent with the allegations of the (as Complaint sanctions amended and by the Offer of Settlement), to the imposition of the set forth and below, understands fully that this Order will become part of Respondent's permanent disciplinary and record may any be considered in future actions brought by FINRA. BACKGROUND ...

www.finra.org

The SEC

<https://www.sec.gov/litigation/admin/2015/33-9711.pdf>

Before the SECURITIES AND EXCHANGE COMMISSION

Before the . SECURITIES AND EXCHANGE COMMISSION . SECURITIES ACT OF 1933 . Release No. 9711 / January 27, 2015 . SECURITIES EXCHANGE ACT OF 1934 . Release No. 74141 / January 27, 2015 . ACCOUNTING AND AUDITING ENFORCEMENT . Release No. 3621 / January 27, 2015 . ADMINISTRATIVE PROCEEDING . File No. 3 -16361 . In the Matter of

www.sec.gov

FINCEN

<https://www.fincen.gov/news/news-releases/fincen-fines-oppenheimer-co-inc-20-million-continued-anti-money-laundering>

FinCEN Fines Oppenheimer & Co. Inc. \$20 Million for Continued Anti-Money Laundering Shortfalls | FinCEN.gov

Washington, D.C. – The Financial Crimes Enforcement Network (FinCEN), working closely with the U.S. Securities and Exchange Commission (SEC), assessed a \$20 million civil money penalty today against Oppenheimer & Co., Inc., for willfully violating the Bank Secrecy Act (BSA). Oppenheimer, a securities broker-dealer in New York, admitted that it failed to establish and implement an adequate ...

www.fincen.gov

In the summer of 2012, I had extensive correspondence with Robin Traxler at FINRA where I also cc'd Sean McKessy then SEC OWB Chief. The CURRENT OWB Chief and the SEC IG are in possession of this correspondence. My correspondence dealt with 2 penny stock shells cited in my Knight Capital TCR submitted by Berger Montague in March 2013 attached here: Colorado Goldfields and AppTech. Both shells were NITE and UBSS top traded OTCM shells in 2010-2013. These 2 shells were cited by FINRA in their Oppenheimer AML complaint. Again, the SEC and FINCEN Oppenheimer AML complaints were based on this FINRA complaint. In fact, per the FINRA Opco complaint above, customer "TC" was dumping worthless AppTech (APCX) certificates well into mid 2010. DIRECTLY overlapping with the NITE/UBSS APCX trading activity cited in my Berger 2013 TCR attached and discussed by me with Robin Traxler at FINRA. HOW is it possible that the SEC OWB didn't share my information with SEC investigators? Current SEC OWB Chief Norberg was previously an assistant to then OWB Chief McKessy.

WHO ultimately executed the trades cited in the FINRA Opco complaint?

Further, the SEC Gibraltar Securities complaint raises more questions than answers as well.

<https://www.sec.gov/litigation/complaints/2013/comp22683.pdf>

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK SECURITIES AND EXCHANGE COMMISSION, 13 Civ. GffirALTAR GLOBAL SECURITIES, COMPLAINT NATURE OF THE ACTION - SEC.gov

12. David Della Sciuca, Jr., age 27, is a resident of Fort Lauderdale, Florida. In . the Magnum d'Or complaint, the Commission charged Della Sciuca with acting as a nominee

www.sec.gov

The SEC Gibraltar Securities complaint references only 1 OTCM money laundering shell: Magnum d'Or. The complaint specifically states that Oppenheimer sold just 969,822 shares. Again, no mention of executing BD/MM.

The SEC Oppenheimer AML cites Gibraltar trading activity also.

The share amounts in the SEC complaint grossly under estimate that in the FINRA complaint. WHY?

The judge in the Gibraltar case said "the SEC's requested amount CLEARLY UNDERESTIMATES the defendants ill-gotten gains...."

<http://www.tribune242.com/news/2016/jan/13/bahamian-broker-25m-sanction/>

Bahamian broker in \$25m sanction | The Tribune

A former Bahamian broker/dealer and its principal have been hit with a combined \$24.484 million in financial sanctions by a US court, which found that their "ill gotten gains" were likely ...

www.tribune242.com

WHY didn't the SEC go after ALL of the sellers in the FINRA Opco AML complaint? WHY did the SEC "strip out" \$46 million from the Gibraltar ill gotten gains claiming the customers were "UNKNOWN"? WHO is the SEC protecting? WHO were the executing BD's/MM's in the FINRA Opco CGFIA and APCX trades? They certainly know who the customers were. Is customer "JK" Justin Keener/JMJ also in my March 2013 TCR attached? While the SEC Opco AML was based on the FINRA Opco AML, it stopped short of a thorough investigation of NITE and UBSS. In fact, the trading activity of NITE/VIRT and UBSS in the FINRA complaint: my information SHOULD have triggered an immediate investigation of NITE and UBSS. It did not. Did the SEC commit fraud on the court in its OMISSION of material information?

The timing of the SEC's preliminary determination and the reasoning for the denial ALSO raises more questions than answers.

My Award application for the Oppenheimer AML SEC complaint was 5 years ago. That's FIVE years ago. So, WHY NOW am I so blessed by the SEC with a preliminary judgement?

The SEC basis for denying my Award claim for covered action 2015-016:

"Investigative staff responsible for the covered action NEVER RECEIVED ANY INFORMATION FROM THE CLAIMANT OR had any communication with the claimant"

Let's take this whopper in 2 parts:

First, the SEC OWB denied my Award application because The investigators in the complaint never received my information. Has the SEC OWB re written the investigative protocol in this denial? How am I or ANY whistleblower supposed to know WHO the investigators are in a particular case WHEN according to the SEC: ALL investigations are done in a confidential manner????

WHAT DOES THE SEC DO WITH WHISTLEBLOWER TIPS EXACTLY? Do they share whistleblower information with ENFORCEMENT as is mandated? HOW would ANY whistleblower know WHO to share information with at the SEC? Isn't that the job of the SEC OWB?

Second, the fact that no one at the SEC contacted me DOES NOT mean the SEC didn't use my information. This is a completely bogus argument. It certainly would NOT be the first time the SEC used my information now would it Jane?

In fact, it is NOT the responsibility of the whistleblower to get his/her information to the right Enforcement personnel. That responsibility EXPLICITLY falls on the SEC OWB. So, is the SEC OWB admitting gross negligence in handling my information? After the monumental failure in the Madoff Ponzi/ money laundering SEC facilitated scam on the public the then SEC IG made specific recommendations to the SEC with regards to the proper handling/vetting of Tips and Complaints.

<https://www.sec.gov/files/468.pdf>

Review and Analysis of OCIE Examinations of Bernard L. Madoff Investment Securities, LLC

Review and Analysis of OCIE Examinations of Bernard L. Madoff Investment Securities, LLC Executive Summary Background. On June 25, 2009, the Securities and Exchange Commission's

www.sec.gov

AGAIN: The responsibility to properly vet Whistleblower information and get the information into the right hands at the SEC falls EXPLICITLY and EXCLUSIVELY with the SEC OWB itself and is NOT the responsibility of the whistleblower. Further, according to the previous SEC IG in the monumental Madoff failure: the responsibility to contact those supplying Tips and Complaints ALSO falls explicitly and exclusively with the SEC OWB and not the whistleblower. Using these excuses as the basis of denial of Award is completely contrary to SEC MANDATED protocols and procedures.

Is the SEC OWB admitting it doesn't comply with those recommendations? Recall: the monumental SEC Madoff failure was NOT the fault of Whistleblowers either. OR is the SEC OWB scrambling for a 5 years in the waiting preliminary determination?

So, after 5 years of waiting for a preliminary determination for my award claim, this is what the SEC best and brightest come up with?

My Denial of Award for covered action 2015-016 was completely made up on the fly.

The SEC OWB has applied completely fabricated "rules" to issue this denial. Further affirmation of ALL of my allegations.

Also by SEC admission, the SEC allowed these 2 penny stock shells to remain a clear and present risk to the investing public. Were CGFIA and APCX ONLY money laundering shells for Oppenheimer in 2008-2010 and then suddenly they were no longer money laundering shells when NITE and UBSS traded billions of shares of both shells 2010-2013?

WHY did it take until September 2018 before the SEC finally revoked the CGFIA registration?

<https://www.sec.gov/cgi-bin/browse-edgar?company=Garpa&owner=exclude&action=getcompany>

So, WHY was there no SEC investigation of NITE and UBSS trading activity in money laundering shells APCX and CGFIA? The SEC et al facilitated NITE "glitch" took place in August 2012. This SEC/Jefferies/JPM/BX/GS/SEC Chair Clayton Sullivan Cromwell colleague Jared Fishman et al bailout coincides directly with NITE trading activity in 2 SEC/FINRA/FINCEN acknowledged money laundering shells. AND the "bailout" penny stock esque reverse merger between Getco and Knight didn't close until July 2013. HOW could the SEC conduct a COMPLETE and thorough investigation into the FINRA Opco AML complaint WITHOUT implicating NITE when NITE was CLEARLY trading billions of shares of OTCM money laundering shells BEFORE and coinciding with the SEC et al facilitated "glitch" bailout? For UBSS, the DOJ dropped its cross border AML DPA complaint in 2010. UBSS was trading money laundering shells well after the DOJ claimed UBSS was in compliance with the cross border DPA. To be clear: BOTH NITE and UBSS knew CGFIA and APCX were money laundering shells when they traded billions of shares of each 2010-2013. Is that FACT disputed by the SEC? The SEC OBSTRUCTED a thorough investigation into the ENTIRETY of trading activity of NITE and UBSS in CGFIA and APCX: MY CLAIMS. Josh Sason/Hanover/ Magna knew CGFIA was a money laundering shell also

<https://www.sec.gov/Archives/edgar/data/1344394/000114420413041432/0001144204-13-041432-index.htm>
ALSO in my claims: Joshua Sason/Hanover Magna. CGFIA. Also my NewLead TCR1426518350699 and FreeSeas TCR1440274395191 separate but related TCR's where NITE was a top trader in both and BOTH TCR's were filed well in advance (years prior) to the Sason/Hanover/Magna February 2019 complaint. Here's one thing the SEC has been consistent about: The SEC ignores the role of executing BD's and MM's in these scams. WHY? Because NITE is the #1 OTCM shell trader. As far as the SEC is concerned Penny stock trading fairies convert worthless certificates into real money. NO! Executing BD's/MM's like NITE do. Did Oppenheimer sell this order flow to NITE? Who ultimately converted these worthless certificates to real money? As the number 1 OTCM money laundering shell trader it is statistically improbable the NITE has never been the focus of an SEC AML complaint. Per my TCR: what does the NITE Compliance Department do exactly? How many SAR's has NITE filed in the last 10 years? In a 2015 SIFMA speech then SEC Enforcement Director Ceresney was "SHOCKED" by the number of BD's filing 1 or ZERO SAR's. That was just 5 years ago. WHEN would NITE file a SAR releted to the billions of shares of OTCM money laundering shells it trades like CGFIA and APCX: BEFORE or AFTER it trades those BILLIONS of shares? Does NITE pull markets and alert regulators OR continue to trade billions of shares of OTCM money laundering shells in the face of GLARING AML red flags? In fact, in December 2019 the top traded NITE/VIRT OTCM money laundering shell was ELTZ

<https://www.sec.gov/cgi-bin/browse-edgar?action=getcompany&CIK=0001607281&owner=exclude&count=40&hidefilings=0>

The SEC knows the people/entities in ELTZ well

<https://www.sec.gov/litigation/admin/34-46993.htm>

Strata Coal Company and Terrence A. Tecco: Admin. Proc. Rel. No. 34-46993 / December 13, 2002

Strata Coal Company ("Strata" or "the company") is a non-reporting Nevada shell corporation based in Frisco, Texas. Strata's shares are quoted on the Pink Sheets under the symbol SCOC. Until September 2002, the company was known as WesPac Technologies, at which time it changed its name to Strata. 2. Tecco is the sole officer, director, and ...

www.sec.gov

<https://www.sec.gov/news/press-release/2019-16>

SEC.gov | SEC Charges Broker-Dealer and Transfer Agent in Microcap Shell Factory Fraud

The Securities and Exchange Commission today announced charges against a broker-dealer, a transfer agent, and three individuals for their roles in the creation of over a dozen undisclosed "blank check" companies from 2009 to 2014.

www.sec.gov

Doesn't the NITE/VIRT compliance Department have internet service in Jersey City? As a DIRECT result of the SEC obstructing a complete and thorough investigation into the ENTIRETY of trading activity in APCX and CGFIA, the top NITE/VIRT traded OTCM money laundering shell in December 2019 was AML red flags galore ELTZ. Illegal activity ACTIVELY facilitated by the SEC. The examples cited in this e mail are not exhaustive.

And, for it's part AppTech is up and running again/still

<https://www.sec.gov/cgi-bin/browse-edgar?company=Apptech&owner=exclude&action=getcompany>

Unfortunately, AppTech is still up and running as a direct result of the aforementioned SEC " CLEARLY under estimating" otherwise known as CLEARLY OBSTRUCTING.

In conclusion, The SEC solicits information from whistleblowers like me. The SEC uses whistleblower information to bring actions and then doesn't compensate whistleblowers for their information.

OR

The SEC uses whistleblower information to protect criminality perpetrated on the investing public so that this criminal activity can continue. BOTH are gross dereliction of the stated and MANDATED SEC Whistleblower statutes. To blame a whistleblower for the SEC's EXPLICIT and EXCLUSIVE responsibility to properly vet and distribute whistleblower information within the SEC as an excuse to deny Awards is also criminal activity. The SEC: criminals using whistleblower information to protect other criminals AND deny whistleblower rightful compensation for their information.

I appeal the SEC preliminary determination and wish to file ANOTHER complaint with the SEC IG.

Cheers!

Christopher J Dilorio

Janey,

how long have you been in possession of my Knight Capital TCR? Almost 7 years to the day. How many follow up e mails have I sent the SEC since then?

For 7 fucking years, the SEC has known about JMJ/Keener. I told them

<https://www.sec.gov/litigation/complaints/2020/comp-pr2020-72.pdf>

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA SECURITIES AND EXCHANGE COMMISSION No. COMPLAINT SUMMARY - sec.gov

5. Justin W. Keener, age 45, resides in San Juan, Puerto Rico. During the Relevant Period, Keener was a resident of Miami Beach, Florida. Keener registered the name "JMJ Financial" as a fictitious name in Florida in 2008 and used it to conduct the business described

www.sec.gov

In February 2019, the SEC brought an action against Joshua Sason/NewLead
I told the SEC about Magna/ Sason ALSO in my 2013 TCR.

<https://www.sec.gov/litigation/litreleases/2019/lr24403.htm>

Joshua Sason, et al. (Release No. LR-24403; Feb. 15, 2019)

Washington, D.C., February 15, 2019 - The Securities and Exchange Commission today announced charges against four individuals and related businesses for their roles in two microcap frauds and unlawful securities offerings.

www.sec.gov

AND, I filed separate but related NewLead and FreeSeas TCR's in 2015

Then there's the UBS AML complaint.

ALSO my claims. For which I sent 10 (TEN) separate Award applications from a commercial fax machine in April/May 2019. AND I have YET to receive even a preliminary determination from the OWB/Norberg IG, I see your "investigation" into my very very serious accusations of Obstruction related to my information was thorough. In short, the SEC has and still is ripping me off.

Janey, be a hun and update my TCR's/Awards cited in this e mail.

And Ms Welshhans, a couple of questions for you:

1) Have you read the FINRA WTFC Keener complaint? Fictitious notes Ring a bell?

Same MO as Sason/Magna/NewLead/FreeSeas etc etc etc

2) WHO executed the Keener OTCM trades in your complaint? Penny stock trading fairies?

YES, NITE was a top trader in BOTH FreeSeas and NewLead

The core business at NITE/VIRT is and ALWAYS has been: abusive naked shorting OTCM (and other) shells to facilitate money laundering.

In short Ms Welshhans, NITE/VIRT converts these worthless certs into real money. NONE of JMJ/Sason/IBC/Ironridge/Asher etc etc etc activity takes place without a willing, corrupt, criminal, executing BD/MM like NITE/VIRT, CDEL etc

Finally, The Keener SEC complaint is FURTHER evidence that FINRA has NO business enforcing US securities LAWS. When FINRA "invited" Keener to a disciplinary hearing almost 7 years ago, Keener told them to "fuck off". FINRA bar meant nothing the last 7 years. EXCEPT JMJ/Keener/NITE ripping off more investors.

Obviously the SEC has/is using my information. I expect to be compensated.

Cheers!

Christopher Dilorio

Mr Peirce,

Congratulations on your nomination as SEC Commissioner. I have read your paper on FINRA lack of accountability. I believe the SEC has abdicated its responsibility to enforce Broker Dealer compliance with the BSA to FINRA BECAUSE it is not accountable. The SEC has not initiated a single stand alone AML complaint. The Brown Brothers Harriman AML complaint IS my claim. ALL of the entities in the complaint are un named WHY? My SEC and IRS Whistleblower complaints explain why.

Hello, My name is Chris DiIorio. I have filed extensive SEC and IRS Whistleblower complaints alleging a direct link between penny stock money laundering, domestic and foreign entities, Swiss Banks, and executing brokers like KCG and UBS. I can provide overwhelming evidence of SEC obstruction. Please read the FINRA Brown Brothers Harriman AML complaint. This is my claim. All of the entities in the complaint are un named. Why? The SEC is not only obstructing an investigation, they are aiding and abetting the activity. These are not far flung theories. The UBS Whistleblower Birkenfeld and his attorney sent 52,000 accounts to the SEC and DOJ. The DOJ at the influence of President Obama and Hillary Clinton entered into the UBS DPA based on just 4400. What is so egregious is the activity continues un abated today.

Start with the so called August 2012 Knight/KCG trading "glitch". Initial reports say the NYSE was breaking the trades. WHY did they stop. Former KCG CEO Joyce said he had a very frank discussion with then SEC Chair Schapiro where the SEC wanted to send a very strong message to market participants. Why not just continue to break the trades and hit KCG with a hefty fine? That would not create the conditions to grant KCG exception after exception to do their emergency funding which transferred 74% of the company to "glitch" funding participants and ultimate reverse merger partner GETCO. AND, despite claiming to having a "highly liquid balance sheet" KCG had to raise the entire amount of the loss.

A very significant and public event was cited in a WSJ article where immediately following the "glitch" KCG inadvertently sent 4000 worthless securities to JPM in an attempt to secure a tri party financing where JPM guaranteed the loan. This is discussed in my attached TCR's and also the topic in a March 2014 letter I sent to the SEC. In the end, the emergency funding was NOT collateral based. The participants knew exactly what a fraud the KCG balance sheet was. After the stock was decimated to \$3, the deal was a convertible with a conversion price at a 50% discount or \$1.50/ share.

There is much more, but this is a good start.

Recently, KCG did a modified Dutch auction where they "sold" an asset (HotSpot) to an entity both KCG and GETCO were a major shareholder (BATS) KCG CEO Coleman called it a "highly competitive process".

Virtually all of the proceeds went to buy back stock from "glitch" financing participants. The purchase price was \$14/share. The stock had never traded there and hasn't since. Reports say 82 million shares were tendered at or BELOW \$14. But they chose to repurchase 23 million shares AT \$14????? I have overwhelming evidence that supports my allegations that the SEC is engaging in criminal obstruction to protect KCG.

1) Current KCG Dan Coleman ran Equities at UBS during the massive REG Sho violations as well as the cross border activity detailed by Whistleblower Birkenfeld. White and Ceresney represented UBS prior to joining the SEC

2) At June 30 2011 KCG/Knight reported just 105 million in working capital with hundreds of millions in worthless securities sitting on its balance sheet. KCG was insolvent

3) The SEC orchestrated the emergency funding for KCG following the so called Aug 2012 trading "glitch"

4) Read FINRA AML complaints against Brown Brothers Harriman. This is my claim. It links penny stock money laundering to executing brokers like KCG, domestic and foreign entities, and Swiss banks. ALL of the entities in the complaint are un named. WHY?

5) The FINRA World Trade Financial AML complaint discusses several entities cited in my claims. The customer the complaint focuses on is Justin Keener. Still very much in business. The red flags cited by FINRA were cited in my claims as well. Yet still no investigation.

6) in July 2015 I contacted Kevin Goodman Dir OCIE for Broker Deals at the SEC. He had never seen my information. The IG OCIE Madoff report mandated the OCIE to vet information. McKessy and Ceresney never sent my info to him

7) I'm sure you are familiar with the Manning v Merrill, KCG, UBS et al litigation. The SEC does not want an investigation into my claims while the litigation is pending.

8) My claims detail ex clearing trading activity by KCG and UBS. despite the glaring red flags in doing so. Ex clearing s the Obligation Warehouse. A NON GUARANTEED SERVICE set up by the SEC and DTCC to allow firms like KCG to circumvent close out requirements of Rule 204. Clearly contrary to the intent of the SEC authorization in Sec 17a of the 1934 Act to create a system of prompt and timely settlement and to remove impediments there of.

In short, I told the SEC KCG was insolvent in 2011. Rather than investigate and prosecute, they chose to obstruct. The activity in my TCR's pre dates the "glitch". An investigation would show the SEC bailed out a criminal enterprise. Because of the obstruction, the activity continues today unabated in stocks like STBV, VELA, NEWL, FREE, and dozens more. The investing public remains at risk

More to come
Chris DiIorio

From: "[REDACTED]" <[REDACTED]>
To: "[REDACTED]" <[REDACTED]>, "[REDACTED]" (USANYS)" <[REDACTED]>
Subject: RE: Agenda
Date: Mon, 07 Dec 2020 16:40:11 +0000

Hi all—checking in on this, I've highlighted tasks that are completed or in motion. Let me know if I've missed anything. None of this is time-sensitive, I'm mostly just checking in to stay organized, so no rush on anything.

- Relativity review of GM emails:
 - Team will split a batch review as a shared project, which will commence after we complete all Relativity review for discovery purposes.
- Identify an [REDACTED] employee (likely retired) who managed donor relations with Epstein/can authenticate documents
 - Records custodian for student files can be dealt with closer to trial.
 - [REDACTED] will contact counsel to begin discussing, and to follow up on our last conversation about records. (Within two weeks)
- Identify a PBPD detective who can authenticate items recovered from search of PB house
 - [REDACTED] will handle outreach to PBPD (within one month)
- Talk to [REDACTED] to make sure [REDACTED] has searched all her emails for relevant communications
 - [REDACTED] will handle and give a heads up they will contact her mother (within two weeks)
- Potentially interview [REDACTED] client
 - [REDACTED] will review Relativity and set up interview (two weeks)
- Potentially re-interview [REDACTED]
 - Team will review 302 and schedule follow-up interview
 - [REDACTED] will contact [REDACTED] regarding an interview (within two weeks)
- Meet with [REDACTED]
 - Discuss with chiefs tomorrow re: superseder timing
- Interview [REDACTED]
 - Ask agents to contact and interview him ([REDACTED] – within 2 weeks)
- Re-interview [REDACTED] (with counsel)
 - Ask agents to contact him re: appointed counsel ([REDACTED] –within two weeks)
- Interview [REDACTED]
 - Talk to agents about an interview, not a high priority ([REDACTED])
- Interview [REDACTED]
 - [REDACTED] will contact his attorney re in person interview
- Re-interview [REDACTED]
 - [REDACTED] will contact his attorney re in person interview in January
 - [REDACTED] will review emails in Relativity
- Interview [REDACTED] and other individuals on flights w/ [REDACTED]
 - [REDACTED] will talk to agents about approaching them
- Review victim interview notes and interview any outcry witnesses we haven't spoken to yet, including [REDACTED] (within one month)
 - [REDACTED]: [REDACTED]
 - [REDACTED]: [REDACTED]
 - [REDACTED]: [REDACTED]
- Interview [REDACTED] mother
 - [REDACTED] will ask agents to interview by phone

- Investigate immigration records/travel records re: [REDACTED]
 - [REDACTED] will take a look and work with agents
- Interview [REDACTED]
 - [REDACTED] will call Sigrid about a potential interview
- Review deposition transcripts for GM (keeping in mind SOL is approaching)
 - [REDACTED] will send SOL reminder
- Tip-line leads that [REDACTED] flagged
 - [REDACTED] will flag for agents

From: [REDACTED]

Sent: Wednesday, November 11, 2020 4:25 PM

To: [REDACTED] <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>

Subject: RE: Agenda

Here's the task list, based on our conversation:

- Relativity review of GM emails:
 - Team will split a batch review as a shared project, which will commence after we complete all Relativity review for discovery purposes.
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- Meet with [REDACTED]
 - Discuss with chiefs tomorrow re: superseder timing
- Interview [REDACTED]
 - Ask agents to contact and interview him ([REDACTED] – within 2 weeks)
- Re-interview [REDACTED] (with counsel)
 - Ask agents to contact him re: appointed counsel ([REDACTED] –within two weeks)
- Interview [REDACTED]
 - Talk to agents about an interview, not a high priority ([REDACTED])
- Interview [REDACTED]
 - [REDACTED] will contact his attorney re in person interview
- Re-interview [REDACTED]
 - [REDACTED] will contact his attorney re in person interview in January
 - [REDACTED] will review emails in Relativity
- Interview [REDACTED] and other individuals on flights w/ [REDACTED]
 - [REDACTED] will talk to agents about approaching them

The following are some potential next steps – either individuals to interview or re-interview, records to search for/identify, and so forth.

- Relativity review of GM emails
- Identify an [REDACTED] employee (likely retired) who managed donor relations with Epstein/can authenticate documents
- Identify a PBPD detective who can authenticate items recovered from search of PB house
- Talk to [REDACTED] to make sure [REDACTED] has searched all her emails for relevant communications
- Potentially interview [REDACTED] client
- Potentially re-interview [REDACTED]
- Meet with [REDACTED]
- Interview [REDACTED]
- Interview [REDACTED]
- Interview [REDACTED]
- Re-interview [REDACTED]
- Interview [REDACTED]
- Review victim interview notes and interview any outcry witnesses we haven't spoken to yet, including [REDACTED]
- Interview [REDACTED] mother
- Investigate immigration records/travel records re: [REDACTED]
- Re-interview [REDACTED] (with counsel)
- Interview [REDACTED]
- Review deposition transcripts for GM (keeping in mind SOL is approaching)
- Tip-line leads that [REDACTED] flagged

[REDACTED]
Assistant United States Attorney
Southern District of New York

[REDACTED]
[REDACTED]
[REDACTED]

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December 7, 2020

BY ECF

Honorable Alison J. Nathan
United States District Judge
United States Courthouse
40 Foley Square
New York, NY 10007

Re: *United States v. Ghislaine Maxwell*
20 Cr. 330 (AJN)

Dear Judge Nathan:

As counsel for Ghislaine Maxwell, we write in response to the letter from [REDACTED], MDC staff attorneys. (See Dkt. 88.) The letter fails to address a number of concerns raised in our October 29th letter to Warden [REDACTED] and raised with the Court. The MDC's letter also contains inaccuracies and omissions and raises more questions than it attempts to answer. Rather than paraphrase our letter, we are providing it for the Court's consideration. (See Exhibit A.) We renew our request that Warden [REDACTED] respond directly to the Court and counsel and explain why Ms. Maxwell must be detained under such harsh and restrictive conditions.

Using the term "[i]n her current assignment," the letter attempts to present a picture of compliance with total disregard of the deficiencies of Ms. Maxwell's treatment up to this point. While her meals may currently be in accordance with BOP policy, until September they were not. While her weight may currently be fairly consistent, she had lost over 15 pounds, and she is sustaining hair loss. It took approximately six weeks following arrival to the MDC for Ms. Maxwell to be permitted personal calls on par with other inmates; previously she was given two calls per month unless authorized by the warden. While generally permitted to be out of her isolation cell and confined to the day room from 7:00 am to 8:00 pm with one hour of recreation time, general population inmates are permitted to be out of their cells until 9:30 pm and given more extensive recreation time. While flashlight checks may be performed during regular rounds, Ms. Maxwell is subject to such checks every 15 minutes. Further, because Ms. Maxwell is kept in isolation, she is not permitted to participate in activities accorded inmates in general population, such as programming (educational, leisure and wellness), movies, religious services, job assignment.

Touting that Ms. Maxwell is not in contact with "a number of inmates who have tested positive for COVID-19," the MDC's letter totally ignores that she was in contact with a member of her revolving security team who tested positive, necessitating that Ms. Maxwell be quarantined for 14 days. This further diminished her ability to prepare her defense and resulted in cancelled legal visits. While the letter accurately states that one video teleconference (VTC) was

scheduled for August 17th, it fails to report that the VTC was unsuccessful because the audio connection failed; and, despite constant ongoing requests, no subsequent VTCs have been scheduled.

The letter ignores the fact that there is an outbreak of COVID in the MDC, with some 80 inmates testing positive, far in excess of the number of positive cases reported from March to December. See <https://www.bop.gov/coronavirus/BOP> (reported 12/7/20). While Ms. Maxwell is isolated from general population inmates, the crew of security guards who monitor her 24/7 are not subject to mandatory testing, with some guards assigned to her detail rotating in from BOP facilities where inmates and staff have tested positive. And while Ms. Maxwell may not be exposed to other inmates, she is exposed to individuals while escorted to a common area for body scanning, further risking her exposure to COVID.

While reciting BOP policy, the letter fails to address:

- why as an isolated inmate, Ms. Maxwell is subject to repeated searching;
- why Ms. Maxwell is under 24/7 surveillance by a cadre of officers who are required to report her status every 15 minutes;
- why Ms. Maxwell is constantly surveilled by a hand-held camera, even during attorney-client conferences;
- why all of Ms. Maxwell's legal emails were erased from the CorrLinks system;
- why immediately after receiving two nasal swab COVID tests, Ms. Maxwell was required to remove her mask for an in-mouth inspection, heightening her exposure to COVID as she was placed in quarantine;
- why Ms. Maxwell's legal papers are repeatedly inspected.

Warden [REDACTED] has failed to respond to our assertion that the MDC has imposed extraordinarily onerous conditions of constraint on Ms. Maxwell to avoid the catastrophic consequences of negligence occurring at the MCC that resulted in the death of Jeffrey Epstein. The Attorney General of the United States has said as much. Beyond the decision to not place Ms. Maxwell in general population, to which we have no objection, the letter virtually concedes that other restrictions imposed on Ms. Maxwell are not in response to any concern specific to her and tacitly suggests the heightened restrictions are in response to the high-profile nature of the case and the acknowledged failure by the BOP to keep Epstein – an actual threat to himself – alive. As ABC News reported:

Attorney General William Barr told ABC News on Wednesday that he is keeping a close watch to make sure that Maxwell makes it to trial after Epstein died by suicide in a Manhattan jail while awaiting trial last year. Barr said he was "*livid*" Epstein died while in custody last August. The investigation into Epstein has continued even after his death. I believe very strongly in that case," Barr told ABC News on Wednesday. . . . "And as

you will recall, after he committed suicide, I said that I was confident that we would continue to pursue this case vigorously and pursue anyone who's complicit in it. *And so I'm very happy that we were able to get Ms. Maxwell.*"

*A source said the BOP is taking extra preventative measures to regain the public's trust and confidence as well as preserving the integrity of the Justice Department.*¹

It is obvious that Ms. Maxwell is bearing the brunt of BOP incompetence. Being "livid" over the death of Epstein, the Department of Justice is seeking to repair the BOP's tarnished reputation by placing Ms. Maxwell under extraordinarily harsh conditions, not in any response to Ms. Maxwell's requirements, but rather in response to the failed handling of a completely different inmate.

Ms. Maxwell has been an exemplary detainee. The psychological and physiological impact of solitary isolation is well documented. Ms. Maxwell has not, by her conduct or by virtue of the charges, brought this type of overly restrictive confinement upon herself. The conditions under which she is detained are punitive, unwarranted, deleteriously impacting her ability to prepare her defense, and interfering with counsel's ability to provide the legal representation to which she, and any other detainee, deserves.

The MDC's letter is insufficient. The warden of the institution bears responsibility for the conditions under which Ms. Maxwell is confined. Warden [REDACTED] should be directed to respond to the numerous concerns that have been brought to his attention.

Very truly yours,

Bobbi C. Sternheim
BOBBI C. STERNHEIM

Enc.

cc: All Counsel

Ms. [REDACTED]

Mr. [REDACTED]

¹ <https://abcnews.go.com/US/ghislaine-maxwell-paper-clothes-correctional-center-avoid-suicide/story?id=71699000> (emphasis added).

EXHIBIT A

LAW OFFICES OF BOBBI C. STERNHEIM

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33 West 19th Street - 4th Floor
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October 29, 2020

Via Email/Regular Mail

Warden [REDACTED]
Metropolitan Detention Center
Office of the Warden
80 29th Street
Brooklyn, New York 11232

**Re: Ghislaine Maxwell
02879-509**

Dear Warden [REDACTED]:

As counsel for Ghislaine Maxwell, we again seek your urgent attention concerning issues related to conditions of her detention at the MDC.¹ Our immediate goal is to rectify these problems and improve the extraordinarily restrictive conditions under which Ms. Maxwell is presently confined within your facility.

On July 14, 2020, the Honorable Alison J. Nathan entered an order of detention remanding Ghislaine Maxwell to the custody of the Bureau of Prisons. She has been detained since her arrest on July 2, 2020 and has been incarcerated at MDC under conditions that rival those at USP Florence ADMAX. An exemplary inmate who poses no threat to her personal safety or danger to anyone, she has spent the entirety of her detention in de facto solitary confinement, tantamount to imprisonment as a defendant convicted of capital murder and incarcerated on death row. The conditions of her detention are utterly inappropriate, especially so for a non-violent defendant with no prior criminal history facing non-violent charges a quarter-century old.

Without a doubt, the BOP has imposed extraordinarily onerous conditions of constraint on Ms. Maxwell to avoid the catastrophic consequences of negligence occurring at the Metropolitan Correctional Center (MCC- Manhattan) which resulted in the death of Jeffrey Epstein. The Attorney General of the United States has said as much. The BOP has admitted that the sanctions are not in response to a specific threat that Ms. Maxwell has shown; rather they are in response to the high-profile nature of the case and the acknowledged failure by the BOP to keep Epstein – an actual threat to himself – alive. Ms. Maxwell is bearing the brunt of incompetence on MCC's watch. As ABC News reported:

¹ Previous letters were sent to you on August 28, 2020 and September 9, 2020.

Attorney General William Barr told ABC News on Wednesday that he is keeping a close watch to make sure that Maxwell makes it to trial after Epstein died by suicide in a Manhattan jail while awaiting trial last year. Barr said he was "livid" Epstein died while in custody last August. The investigation into Epstein has continued even after his death. "I believe very strongly in that case," Barr told ABC News on Wednesday. "And I was very proud of the work done by the department, the Southern District [of New York], on that case. And as you will recall, after he committed suicide, I said that I was confident that we would continue to pursue this case vigorously and pursue anyone who's complicit in it. And so I'm very happy that we were able to get Ms. Maxwell." *A source said the BOP is taking extra preventative measures to regain the public's trust and confidence as well as preserving the integrity of the Justice Department.*²

What is clear is that the Government is "livid" over the death of Epstein and is seeking to repair its reputation by placing Ms. Maxwell under extraordinarily harsh conditions; not in any response to Ms. Maxwell's requirements, but rather in response to the failed handling of a completely different defendant.

Ms. Maxwell has been an exemplary detainee who has never received a disciplinary demerit. The purpose of this letter is not simply to express complaint due to the institutional violations and denial of rights suffered by Ms. Maxwell in relation to her pretrial incarceration. Rather, it seeks to bring an unwarranted situation to your attention - conditions that are unduly cruel and punitive and circumstances that are deleteriously impacting our client's ability to prepare her defense which, in turn, interferes with our ability to provide the legal representation to which she, and any other detainee, deserves.

We continue our ongoing attempt to resolve these matters without court intervention. We have voiced complaint through the MDC Legal Department, your office, the AUSAs in charge of this case, and the Federal Defenders of New York.³ Ms. Maxwell has attempted to resolve these matters by following the internal prison procedures, filing written complaints to her unit counselor (BP8), to the warden (BP9), and to the regional office (BP10), to seek remediation as set forth in the BOP manuals and inmate handbook. All to no avail.

Draconian Conditions of Pretrial Detention

Ms. Maxwell's conditions of confinement are extraordinarily onerous - and unlike those of any other inmate at the MDC (or in BOP custody, to our knowledge). In fact, in the time that Ms. Maxwell has been at the MDC, she has met with five separate wardens and interim wardens, many who have remarked that they have never seen in their collective years of experience

² See, "Ghislaine Maxwell given paper clothes at correctional center to avoid suicide attempt: Sources Jeffrey Epstein, her associate, died by suicide in jail last August." <https://abcnews.go.com/US/ghislaine-maxwell-paper-clothes-correctional-center-avoid-suicide/story?id=71699000> (emphasis added).

³ The Federal Defenders of New York has been tasked with scheduling of attorney-client communication in connection with ongoing litigation against the MDC based on conditions of confinement during COVID pending in the Eastern District of New York before the Honorable Margo K. Brodie. *See Federal Defenders of New York v. Federal Bureau of Prisons, et al.*, 19-CV-660 (MKB).

anything like her current regime.⁴ The following conditions and circumstances of her detention, individually and collectively, compromise her opportunity to confer with counsel and prepare her defense for trial and are detrimental to her physical health and psychological well-being:

De Facto Solitary Confinement: Ms. Maxwell is the sole inmate in a housing unit. By this Court's order she is permitted out of her approximately 9-by-7-foot isolation cell from 7:00 am to 8:00 pm, however, she is frequently picked up late and returned to her cell promptly. When out of her cell, she is the sole inmate in a fenced off area of an unoccupied dormitory unit, where she eats, showers, and reviews legal work while continually guarded by three officers.

Despite being housed on an entire floor by herself, Ms. Maxwell is forced back into a tiny corner of the floor. She is needlessly kept in a 63-square-foot space. She gets very little sleep, as she is frequently woken up by flashlights every 15 minutes, loud discussions among the guards, and adjustments of the supplemental camera. Ms. Maxwell is effectively being kept in solitary confinement (she has now been housed alone for well over 100 days) and treated as if she were on suicide watch even though she is not and has never been suicidal.

The psychological and physiological impact of solitary confinement is well documented. Ms. Maxwell has not, by her conduct or by virtue of the charges, brought this type of confinement upon herself. This must be considered punishment.

Further, she has been required to stand for an hour waiting for the lieutenant to move her and during "the count" of inmates she is restricted to her bunk despite being housed in a one-inmate unit. She has at times been forced to do a standup count after midnight. Now she is required to remain on a bed for the duration of the count.

Excessive Scanning and Strip Searching: Ms. Maxwell is searched more frequently and extensively than any other pretrial detainee of which we are aware. All security scans to which Ms. Maxwell have been subjected have returned negative results. Each time Ms. Maxwell is moved from the isolation cell, she is searched and her cell is searched, and the dormitory is searched prior to when she arrives at the dormitory area. Her cell and possessions including her legal papers are searched after she has been moved to the dormitory. The process is repeated when Ms. Maxwell is brought back to the isolation cell. Recently, Ms. Maxwell was searched at least five separate times and strip-searched twice during one day.

Ms. Maxwell is subjected to a body scans each week, and until recently, she received approximately three per week. We assume these are to see if Ms. Maxwell has secreted anything inside her body. We do not understand why it is necessary for the BOP to administer body scans on such a regular and frequent basis – and thereby repeatedly expose Ms. Maxwell to radiation –

⁴ Undersigned counsel has represented clients charged with terrorism-related offenses confined to the most restrictive unit in the Metropolitan Correctional Center, Unit 10 South, aka "the terrorist SHU". In addition, counsel is *Curcio* counsel for a client authorized for the death penalty who is in general population at the MCC. Having visited BOP facilities during the past 35 years and representing clients charged with the most heinous and violent crimes of murder, counsel had never had a client subjected to such punitive conditions of pretrial (or post-conviction) incarceration as in the present case.

especially when she is already under constant surveillance and the scans have all come up negative.

In addition, Ms. Maxwell is required to remove her PPE mask during physical searches, subjecting her to higher risk of exposure to COVID. The impact of such unwarranted and disparate treatment is dehumanizing and demoralizing. On October 24th, she was subjected to a warranted, full pat down search yielding negative results. Within 10 minutes, she was subjected to a strip search. The guard performing these searches remarked that never in 28 years of employment as a correctional officer has she heard or witnessed such a thing. During these searches, guards are within inches of Ms. Maxwell. Prevented from wearing a protective mask, she is forced to open her mouth, stick out and move her tongue left and right. She is continuously and unnecessarily exposed to contracting COVID, causing increased stress and vulnerability.

Deprivation of Food: Ms. Maxwell's meals have been a persistent problem. She has requested a vegetarian diet, been given non-vegetarian meals, and has been denied food on the prison menu. For example, she often receives meals with no protein and has been given only bread and butter for several meals with no additional food. It was not until Ms. Maxwell was given access to the menu for the first time on September 1st, after she complained that she had been given a non-vegetarian meal, that she realized that she had not been receiving full meals with all of the nutritional components since arriving at MDC.

Moreover, she has often been given spoiled food and has not been fed at all for long stretches of time. For example, a recent weekend she was not fed anything for a period of more than 20 hours from Saturday late afternoon until Sunday at midday. As a result of this inadequate nutrition, she has lost upwards of 15 to 20 pounds since arriving at MDC. For the same reason, she is losing hair as well. Her prison medical records reflect that she is suffering from *telogen effluvium* (hair loss due to stress and poor diet). The lack of food also severely affects her ability to concentrate and review discovery to prepare her defense. Further, she has been denied use of a toothbrush, heightening her risk for tooth decay and gum disease.

In addition, at various times and for various reasons, Ms. Maxwell has been denied access to commissary, the only opportunity to purchase food to supplement her diet. Although the MDC nominally approved Ms. Maxwell's request for permission to purchase from the full prison commissary list in August 2020, in fact, her access to the commissary was extremely limited and requested items were denied to her. None of these restrictions are a result of any misconduct or refusal on her part and deprive her of her only chance to remedy the BOP's failure to provide adequate nutrition. Hunger and poor nutrition inhibit her ability to focus and concentrate and negatively impact her overall health and wellbeing.

Deprivation of Sleep: Ms. Maxwell is held in a housing unit in which she is the sole inmate. On various evenings during sleep periods, she is awakened every 15 minutes by flashlights shined into her eyes. The unit is excessively noisy. The noise and constant flashlight checks deprive her of uninterrupted, restful sleep. Repeated disruption of restorative sleep negatively impacts her concentration and ability to focus on document review and defense preparation.

Deprivation of Communication with Family and Friends: The impact of Ms. Maxwell's solitary confinement is aggravated by the deprivation of communication with friends and family. She was limited in the number of familial and social calls to a degree far less than any other detainee of which we are aware; and far less than even those who have been convicted of crimes and held in the same facility.

Compromised Communication with Legal Counsel: As a consequence of COVID-19, restrictions have been placed on exercise of attorney-client relationship for all inmates but seemingly more so for Ms. Maxwell. Scheduled calls have been mishandled by the institution, resulting in missed legal calls. Despite numerous requests, only one video conference has been scheduled for Ms. Maxwell during the entirety of her detention. Recently, legal calls have been repeatedly denied even when confirmed by the Federal Defenders.

All of Ms. Maxwell's CorrLinks emails – all legal correspondence between Ms. Maxwell and counsel - have been deleted, well before the 180-day period in which they may be purged. During in-person legal conferences, Ms. Maxwell has not been permitted to physically handle and review legal documents provided by counsel. Rather, counsel must hold each page against the plastic partition requiring Ms. Maxwell to read these documents, at times from a distance of approximately four feet through a cloudy plastic shield. This method of discovery review in a case involving hundreds of thousands of documents consumes the majority of a time-limited legal conference. It is painstakingly slow and, often, impossible.

Additionally, Ms. Maxwell is denied water or food and the use of toilet facilities during legal visits. She has been told that if she uses the toilet, the conference will be suspended while she is searched, returned to her unit, and then brought back to the visiting room. This process is time-consuming and limits the duration of the legal conference.

In advance of each meeting, officers review her legal materials, slowly and deliberately, and appear to be reading content and breaching confidentiality of privileged information rather than conducting a routine security check. In addition to experiencing difficulty reviewing electronic discovery because files do not open, the officer delivering a hard drive last week appeared to intentionally let it fall to the ground, damaging to the device.

While meeting with counsel, guards set up a tripod with a camera focused on Ms. Maxwell during the entirety of the legal conference. When counsel inquired why the conference was being recorded, the officer claimed the camera was not recording. When counsel inquired why the camera was being focused on the legal conference, the officer responded that Ms. Maxwell must be watched at all times.

Conclusion

These arbitrary and onerous restrictions imposed on Ms. Maxwell are contrary to prison rules and protocols, are not imposed on other inmates, and are utterly disproportionate to her detention. At no time has Ms. Maxwell been deemed a threat to herself or others or posed any disciplinary issues. Ironically, she has achieved two of the highest certifications offered at the MDC: suicide counselor and teacher/instructor.

We request that these onerous conditions be eliminated immediately. Otherwise, please explain why Ms. Maxwell must be detained under such harsh and restrictive conditions. We request that you address our concerns as quickly as possible.

Very truly yours,

Bobbi C. Sternheim

Bobbi C. Sternheim, Esq.

cc: via email

Mark S. Cohen, Esq.

Christian R. Everdell, Esq.

Jeff Pagliuca, Esq.

Laura Menninger, Esq.



UNITED STATES ATTORNEY'S OFFICE
Southern District of New York

U.S. ATTORNEY GEOFFREY S. BERMAN

FOR IMMEDIATE RELEASE
Friday, August 9, 2019
<http://www.justice.gov/usao/nys>

CONTACT: U.S. ATTORNEY'S OFFICE

[REDACTED]
[REDACTED]
(212) 637-2600

**STATEMENT OF MANHATTAN U.S. ATTORNEY ON THE DEATH OF DEFENDANT
JEFFREY EPSTEIN**

Manhattan U.S. Attorney Geoffrey S. Berman said: "Earlier this morning, the Manhattan Correctional Center confirmed that Jeffrey Epstein, who faced charges brought by this Office of engaging in the sex trafficking of minors, had been found unresponsive in his cell and pronounced dead shortly thereafter. Today's events are disturbing, and we are deeply aware of their potential to present yet another hurdle to giving Epstein's many victims their day in Court. To those brave young women who have already come forward and to the many others who may not yet have done so, let me reiterate that we remain proud to stand for you in bringing this case, and our investigation of the conduct charged in the Indictment – which included a conspiracy count – remains ongoing.

We continue to strongly urge anyone who feels they may be a victim or have information related to the conduct in this case to please contact 1-800- CALL FBI."

19-XXX

###

From: [REDACTED]

[REDACTED]

[REDACTED] >

Subject: RE: SDNY News Clips Wednesday, August 14, 2019

Date: Wed, 14 Aug 2019 21:17:05 +0000

Okay. That was awesome.

From: [REDACTED] >

Sent: Wednesday, August 14, 2019 5:16 PM

To: [REDACTED] >

Subject: FW: SDNY News Clips Wednesday, August 14, 2019

I'm disappointed there is no update on the ambulance. This scandal has Inner City News written all over it.

From: [REDACTED] >

Sent: Wednesday, August 14, 2019 5:15 PM

Cc: [REDACTED]

Subject: SDNY News Clips Wednesday, August 14, 2019

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Public Corruption

Epstein

Jeffrey Epstein Raped Me When I Was 15

NYT

By Jennifer Araoz

8/14/19

The first time I stepped into Jeffrey Epstein's mansion on the Upper East Side in the fall of 2001, I noticed his security cameras. They were hard to miss. Inside the front door, he had small TVs playing the footage in real time. I was a child, just 14 at the time. But the message was clear: I was in the house of someone important and I was being watched.

I can still remember watching myself on those screens as I walked into the house of the person I came to know as a predator, a pedophile, my rapist.

I'm filing a civil action against Jeffrey Epstein's estate and accomplices today, under New York's Child Victims Act. A key provision of the law goes into effect today and allows survivors to revive claims if the statute of limitations had expired.

Epstein was found dead, apparently by suicide, in his jail cell last week. I'm angry he won't have to personally answer to me in the court of law. But my quest for justice is just getting started.

During my freshman year, one of Epstein's recruiters, a stranger, approached me on the sidewalk outside my high school. Epstein never operated alone. He had a ring of enablers and surrounded himself with influential people. I was attending a performing arts school on the Upper East Side, studying musical theater. I wanted to be an actress and a singer.

The recruiter told me about a wealthy man she knew named Jeffrey Epstein. Meeting him would be beneficial, and he could introduce me to the right people for my career, she said. When I confided that I had recently lost my father and that my family was living on food stamps, she told me he was very caring and wanted to help us financially.

The trap was set.

The visits during the first month felt benign, at least at the time. On my second visit, Epstein also gave me a digital camera as a gift. The visits were about one to two hours long and we would spend the time talking. After each visit, he or his secretary would hand me \$300 in cash, supposedly to help my family.

But within about a month, he started asking me for massages and instructed me to take my top off. He said he would need to see my body if he was going to help me break into modeling. I felt uncomfortable and intimidated, but I did as he said. The assault escalated when, during these massages, he would flip over and sexually gratify himself and touch me inappropriately. For a little over a year, I went to Epstein's home once or twice a week.

The last day I went to his house was during the fall of my sophomore year. This time, when I was giving him the massage, he told me to take off my underwear and get on top of him. When I said no, he got more aggressive, held me tightly and raped me.

After that day, I never went back. I also quit the performing arts school — the one I had auditioned for and had wanted so badly to attend. It was too close to his house, the scene of so many crimes. I was too scared I would see him or his recruiter. So I transferred to another school in Queens close to my home. Since I was no longer able to pursue my dream of performing arts I eventually lost interest and dropped out.

It took me years to tell the people close to me what had happened. I was so intimidated by his insistence that I never speak a word of my visits to anyone. And like many survivors, I struggled with anxiety and shame for what I had experienced.

The power structure was stacked against me. His money, influence and connections to important people made me want to hide and stay silent. Those same powerful forces let him hide and evade justice.

That changes, starting now. I want my story to hold Epstein to account and also his recruiters, the workers on his payroll who knew what he was doing and the prominent people around him who helped conceal and perpetuate his sex-trafficking scheme. Their hideous actions victimized me and so many young girls like me.

For years I felt crushed by the power imbalance between Epstein, with his enablers, and me. The Child Victims Act finally offers a counterweight. Moving forward, victims will now have until age 55 to bring a civil case.

I hope more states pass similar laws so that more survivors who endured abuse, assault and rape as a child can know what wresting back their power feels like.

Standing up to the entrenched network of power and wealth that surrounded Epstein is scary, but I am no longer afraid. Reliving these experiences is tough, but I've learned to be tougher.

I used to feel alone, walking into his mansion with the cameras pointing at me, but now I have the power of the law on my side. I will be seen. I will be heard. I will demand justice.

Sasse demands Barr 'rip up' 2008 Epstein deal, bring co-conspirators to justice

NY Post

By Emily Jacobs

8/14/19

Sen. Ben Sasse (R-Neb.) has urged Attorney General William Barr to “rip up the non-prosecution, non-investigation agreement” for Jeffrey Epstein so that co-conspirators are brought to justice.

“Too many of Epstein’s secrets have gone to the grave with him, and the Department must not allow his death to be one last sweetheart deal for his co-conspirators,” Sasse wrote in a letter sent to Barr on Tuesday.

“The victims of Epstein’s international sex trafficking ring deserve justice. In order to bring Epstein’s co-conspirators to justice, the Department of Justice should rip up the non-prosecution, non-investigation agreement entered into by Epstein and the U.S. Attorney’s Office for the Southern District of Florida in 2008.”

That 2008 deal, put together by then-US Attorney and recently ousted Labor Secretary Alex Acosta, granted Epstein and “any potential co-conspirators” immunity from federal charges in exchange for him pleading guilty to a single state charge.

Epstein served 13 months in a state prison in Florida, but was allowed out six days a week so he could work from his private office.

Sasse slammed the deal, writing, “This agreement should shock the conscience of anyone familiar with its details.

“These problems run far beyond those identified by the U.S. District Court for the Southern District of Florida, which ruled that federal prosecutors violated the Crime Victims’ Rights Act by hiding the terms of the deal from the women and girls that Epstein raped and exploited until after it was entered.”

This is the second letter Sasse has sent Barr regarding Epstein.

On Saturday, Sasse wrote to the attorney general demanding answers on circumstances that allowed for Epstein to commit suicide in federal custody.

“Heads must roll,” Sasse wrote.

“Every single person in the Justice Department — from your Main Justice headquarters staff all the way to the night-shift jailer — knew that this man was a suicide risk, and that his dark secrets couldn’t be allowed to die with him.”

Barr has promised to bring anyone involved in Epstein’s crimes to justice.

“We will get to the bottom of what happened and there will be accountability,” Barr said, adding, “Any co-conspirators should not rest easy. The victims deserve justice and they will get it.”

Jeffrey Epstein Death: 2 Guards Slept Through Checks and Falsified Records

NYT

By Katie Benner and Danielle Ivory

8/13/19

The two staff members who were guarding the jail unit where Jeffrey Epstein apparently killed himself fell asleep and failed to check on him for about three hours, then falsified records to cover up their mistake, according to several law enforcement and prison officials with knowledge of the matter.

Those disclosures came on Tuesday as the two employees were placed on administrative leave and the warden of the jail, the Metropolitan Correctional Center in Manhattan, was temporarily reassigned, pending the outcome of the investigation into Mr. Epstein’s death, the Justice Department announced.

The two staff members in the special housing unit where Mr. Epstein was held — 9 South — falsely recorded in a log that they had checked on the financier, who was facing sex trafficking charges, every 30 minutes, as was required, two of the officials said. Such false entries in an official log could constitute a federal crime.

In fact, the two people guarding Mr. Epstein had been asleep for some or all of the three hours, three of the officials said.

The attorney general, William P. Barr, on Monday ordered the Justice Department’s inspector general to look into how Mr. Epstein had managed to commit suicide while in custody and why he had been taken off a suicide watch 12 days earlier.

“We will get to the bottom of what happened,” Mr. Barr said.

The warden, Lamine N’Diaye, will be transferred to a Bureau of Prisons office in Philadelphia while the F.B.I. and the Justice Department’s inspector general conduct inquiries. The Justice Department said in a statement that it might take additional punitive actions.

Prison staff discovered Mr. Epstein, 66, dead in his cell at the Metropolitan Correctional Center at 6:30 a.m. on Saturday, officials said. He had apparently hanged himself with a bedsheet, likely fastening the sheet to a top

bunk and pitching himself forward, law enforcement and prison officials said.

Mr. Epstein had been awaiting trial on charges he had sexually abused scores of teenage girls at his mansions in Manhattan and Palm Beach, Fla.

He had apparently tried to commit suicide once before, on July 23, shortly after he was denied bail, which resulted in him being placed on suicide watch, prison officials familiar with the incident have said.

Six days later, prison officials determined that he was no longer a threat to his own life and returned him to a cell in the 9 South housing unit with another inmate, officials said. That inmate was later transferred out of the cell, leaving Mr. Epstein alone on Friday night.

Though it is standard practice to house people who have recently been taken off suicide watch with another person, the prison did not replace Mr. Epstein's cellmate.

The Justice Department, which oversees the Bureau of Prisons, did not immediately identify the two correctional officers who were placed on administrative leave.

Two prison officials familiar with the incident said the two staff members had not looked in on Mr. Epstein for about three hours before he was found.

One of the staff members was a former correctional officer who had taken a different position at the detention center that did not involve guarding detainees. He had volunteered to work again as a correctional officer for the extra overtime pay, a law enforcement official and an employee at the jail said.

The second officer, a woman who was assigned to that wing, had been ordered to work overtime because the jail was short staffed.

James Petrucci, the warden at a federal prison in Otisville, N.Y., has been named acting warden of the Manhattan jail, officials said.

Some union leaders for prison workers expressed dismay with Mr. Barr's decision to allow the warden to continue working, even as the two staff members were placed on leave.

"It makes me angry that they reassigned the warden," said Jose Rojas, an official in the prison employees' union and a teacher at the Coleman prison complex in Sumterville, Fla. "They didn't put him on administrative leave like the others. The warden made the call to take Epstein off suicide watch and to remove his cellmate. That is egregious."

Since Saturday, Mr. Barr has been briefed multiple times a day on the inquiries into Mr. Epstein's death, a Justice Department official said.

In addition to the investigations by the Justice Department, the inspector general and the F.B.I., two other reviews of Mr. Epstein's death were underway, a Justice Department official said.

A team of psychologists from the Bureau of Prisons visited the Manhattan jail on Tuesday to review each step of the decision to take Mr. Epstein off suicide watch.

On Wednesday, an "after-action team" — led by the bureau's Southeast regional director — is scheduled to be at the prison to determine whether employees and officials followed protocols in the days and weeks before Mr. Epstein died, the official said.

Mr. Epstein's death has drawn sharp criticism from Republican and Democratic lawmakers.

On Monday, the chairman and ranking member of the House Judiciary Committee sent a letter to the acting director of the Bureau of Prisons, Hugh Hurwitz, demanding answers about how Mr. Epstein could have been unsupervised long enough to take his own life.

The letter said Mr. Epstein's apparent suicide had brought to light "severe miscarriages" or deficiencies in how inmates are managed at the jail and had "allowed the deceased to ultimately evade facing justice."

It was signed by Representatives Jerrold Nadler, a New York Democrat, and Doug Collins, a Georgia Republican.

Mr. Nadler and Mr. Collins demanded that the Bureau of Prisons hand over by Aug. 21 any details about Mr. Epstein's mental health evaluations and his housing, as well as the bureau's protocols for handling inmates considered at risk of suicide.

They also requested to be told how Mr. Epstein was being monitored and what the surveillance cameras may have recorded in or near Mr. Epstein's cell.

At the same time, Senator Ben Sasse, a Nebraska Republican on the Senate Judiciary Committee, urged Mr. Barr on Tuesday to rip up an agreement federal prosecutors in Florida had reached with Mr. Epstein in 2008 that shielded not only him, but also any other co-conspirators who may have helped him lure teenage girls into prostitution.

"This crooked deal cannot stand," Mr. Sasse said in his letter.

Our first responders didn't leak Jeffrey Epstein's death: FDNY

NY Daily News
By Thomas Tracy
8/13/19

Sex fiend financier Jeffrey Epstein's death was first leaked on a right-wing Internet message board, but didn't come from FDNY first responders, the department said Tuesday.

Details about the degenerate's demise were up on the anonymous message board 4 Chan about 30 minutes before word of the apparent suicide seeped out.

"[D]ont ask me how I know, but Epstein died an hour ago from hanging, cardiac arrest," the poster wrote on Saturday. When pressed for more information, procedures used to resuscitate Epstein were listed.

The data, which appeared to be from a first responder, was first reported by BuzzFeed News.

"The FDNY reviewed the alleged information and determined it did not come from the Department," an FDNY spokesman told the Daily News.

An ongoing investigation into the leak is focused on hospital personnel right now, sources said.

If a city medic or any other medical professional divulged information about Epstein's death, it is a violation of federal health privacy laws and they could face serious consequences, officials said.

Oren Barzilay, head of FDNY EMS union Local 2507 said he was "confident" that someone other than an FDNY member was responsible.

“Reading the posting it looks clear to me that someone is repeating what they read or saw,” Barzilay said. “Patient confidentiality is vital part of our training. Our EMTs and paramedics are well aware of the consequences they would face by leaking such information.”

Two federal investigations have been launched into Epstein’s death.

The accused sex trafficker died Saturday after he apparently used a bedsheet to hang himself inside his cell at the Metropolitan Correctional Center in lower Manhattan.

Epstein, 66, was being held at the federal prison since he was arrested on sex trafficking charges July 6. He attempted suicide by hanging on July 24 while in MCC’s special housing unit, but was not on suicide watch when he died.

Epstein guards suspected of falsifying logs to show they were checking on him: report

Fox News
By Gerren Keith Gaynor
8/13/19

Guards at the New York City jail facility where Jeffrey Epstein is said to have killed himself are suspected of falsifying log entries to show they were checking on the alleged sex trafficker and other inmates with greater regularity than was the case, according to a Tuesday report.

Surveillance video reviewed after Epstein’s death shows guards at the Metropolitan Correctional Center did not make some of the checks they claimed to have made in their logs, a source told the Associated Press. The New York Times reported, citing unnamed officials, that the guards fell asleep at some point and did not check on him for up to three hours.

The federal jail workers claimed they were checking on inmates in Epstein’s unit every half hour, but investigators now believe that was not the case. The Justice Department on Tuesday said that two guards assigned to watch Epstein had been placed on administrative leave.

The latest revelation, first reported by CBS News, comes amid growing conspiracy theories surrounding Epstein’s death as he awaited trial on sex trafficking and conspiracy charges. Prosecutors said he sexually abused dozens of young girls in his New York and Florida residences between 2002 and 2005, allegations that could have landed him behind bars for 45 years.

The 66-year-old disgraced financier was found hanging in his cell on Saturday after using a bedsheet tied to his bunk. He was later pronounced dead at a hospital.

Many lawmakers and conspiracy theorists alike wonder how he could commit suicide inside the Special Housing Unit at the jail facility. Attorney General William Barr said Monday there were “serious irregularities at this facility that are deeply concerning,” and said he was demanding “a thorough investigation.”

In the aftermath of Epstein’s apparent suicide, his alleged “recruiter” Ghislaine Maxwell now finds herself under the microscope.

Geoffrey Berman, the U.S. attorney for the Southern District of New York, has vowed to continue the investigation into Epstein, who, at the time of his death, was in a New York facility awaiting trial on allegations he operated an underage sex trafficking ring. And even though Epstein is now firmly outside the grip of the criminal justice system, his alleged “co-conspirators” do not enjoy a similar reprieve.

Several of Epstein's accusers have pointed to Maxwell as playing a pivotal role in enlisting his victims, according to thousands of pages of court documents unsealed on Friday -- just hours before Epstein reportedly used his bedsheet to hang himself from a prison bunk -- in relation to a 2015 defamation suit filed against Maxwell.

Those who say they're victims of Epstein and other eyewitnesses to the events surrounding his alleged crimes, have testified Maxwell's role was in arranging massages and sexual favors for Epstein and a circle of his high-profile associates.

But Maxwell allegedly played an even more direct role in the sex abuse on several occasions.

Maxwell and Epstein were accused of molesting two victims in 1996 but the claims -- allegedly reported to the FBI -- fell on deaf ears, according to an affidavit viewed by the Miami Herald.

Maxwell has not released any public statements since Epstein's arrest in early July. No criminal charges have been brought against her and she has consistently and vehemently denied all allegations of misconduct.

Jeffrey Epstein's gal pal Ghislaine Maxwell lying low at Massachusetts mansion

NY Post

By Yaron Steinbuch

8/14/19

Jeffrey Epstein's former gal pal Ghislaine Maxwell, who has been accused of procuring underage victims for the millionaire pedophile, has been living in a secluded Massachusetts mansion with her new beau, according to a report.

The 57-year-old British socialite is in a relationship with tech CEO Scott Borgerson, 43, with whom she is living in the \$3 million oceanfront home at the end of a long private road in Manchester-by-the-Sea, the Daily Mail reported Wednesday.

"She's become a real homebody, rarely ventures out. She's the antithesis of the woman who traveled extensively and partied constantly with Epstein," a source familiar with Maxwell's new life told the news outlet.

Maxwell, who has virtually disappeared from view and whose lawyers have not responded to requests for comment, has been described as the late financier's girlfriend, closest pal and sex procurer.

Court papers unsealed Friday — just hours before Epstein was found "unresponsive" in his cell at the Metropolitan Correctional Center in Manhattan — also allege that she served as the "madam" in his alleged ring and also engaged in threesomes with some of the victims.

She has previously denied any wrongdoing.

Epstein is believed to have hanged himself while locked up on federal sex-trafficking charges.

The mansion where Maxwell has been ensconced recently is a stately three-story colonial property with five-bedrooms and wraparound terraces, according to the Daily Mail.

Borgerson, the owner, is a member of the Council on Foreign Relations and the co-founder and CEO of CargoMetrics Technologies, an investment management company that specializes in analyzing data on global shipping, according to a bio on LinkedIn that bears his name.

The former Coast Guard officer, who earned a Ph.D. from the Fletcher School of Law and Diplomacy at Tufts University, “has advised the White House on maritime policy” and “testified a number of times before Congress as a nonpartisan witness,” according to the bio.

Last month, the Daily Mail observed Borgerson running errands in the affluent community of Manchester-by-the-Sea, about 25 miles northeast of Boston.

Later, he was seen walking Maxwell’s pooch on Boston Common near his apartment where he lives during the week while running his company.

Borgerson declined to comment on his relationship with Maxwell when contacted by the Daily Mail.

Maxwell’s lawyer, Jeff Pagliuca, has not responded to requests for an interview with her by the news outlet.
Jeffrey Epstein’s Curious Ties to His Brother’s Real-Estate Business

NY Magazine

By James D. Walsh

8/14/19

Jeffrey Epstein’s apparent suicide over the weekend likely means that his criminal case will not proceed. But in a statement Saturday, Attorney General William Barr issued a sharp warning: “Any co-conspirators should not rest easy.” There has been plenty of speculation as to whom may be held responsible for helping or enabling Epstein, from his alleged madam, Ghislaine Maxwell, to the attorneys who handled his business dealings for decades. While he has not been accused of involvement in the sex offender’s crimes, new details about Jeffrey’s younger brother, Mark Epstein, have raised questions about their business ties, and how close the pair really were.

Jeffrey and Mark grew up together in the Sea Gate community in Brooklyn. Mark, who is a year-and-a-half younger than his brother, went on to start a silk-screening business and, having “semi-retired” at age 39, he dabbled in real estate and philanthropy. In 2009, Mark was named chair of the Cooper Union board. That ended with his resignation in 2015 after the school’s controversial decision to begin charging students tuition for the first time in the college’s 150-year history.

The Epstein brothers’ relationship in adulthood is opaque. In filings, the U.S. Attorney for the Southern District had said Jeffrey had “no known immediate family” and “no meaningful family ties.” Yet in a 2009 deposition, Mark said that he knew Donald Trump flew on Jeffrey’s plane “numerous times” and that he’d personally seen Trump on his brother’s plane once. “They were good friends,” Mark recently told the Washington Post. “I know [Trump] is trying to distance himself, but they were.” After Jeffrey pleaded not guilty last month to sex trafficking of minors, Mark offered his Florida home to guarantee his brother’s bond.

Last month, Mark told Crain’s New York that he had no business connection to his brother, but documents show that Mark’s real-estate business, Ossa Properties, is linked to J. Epstein & Co., the company through which Jeffrey managed retail billionaire Leslie Wexner’s assets. The person in charge of running Ossa Properties, Jonathan Barrett, was also an asset manager for J. Epstein & Co. Mark told Crain’s that the connection between the two companies was “a mistake,” reminiscent of the “recording error” that linked private-equity tycoon Leon Black’s foundation to Jeffrey years after he was convicted of soliciting a minor for prostitution in Florida.

At the center of the curious connection between Mark’s real-estate company and his brother is a condominium at 301 East 66th Street, a 15-minute walk from Jeffrey’s mansion on East 70th Street. Mark owns the majority of the units in the bland, 16-story, 200-unit building, which he purchased from Wexner in the early 1990s. Mark has said his brother does not own a share of the building, but for years Jeffrey allegedly housed friends, employees, and associates in apartments in the building, including models connected to MC2, the modeling agency in which he invested. (The Daily Beast recently reported that Mark also began dabbling in the modeling industry around the same time Jeffrey invested in MC2.) In 2010, a former MC2 employee said in a sworn statement that the MC2 models were in fact victims of Epstein’s underage sex-trafficking ring.

“Jeffrey rents several apartments there where he keeps his girls, alleged models for the MC2 agency he owns,” Florida attorney Brad Edwards, who represents a number of Epstein’s alleged victims, told “Page Six” in 2009. “But Mark acts like he doesn’t even know his brother.”

In addition to the models, the Jeffrey Epstein associates who also rented apartments or ran businesses out of the building included an ex-girlfriend, his pilot, and his MC2 business partner, Jean-Luc Brunel. (One of Epstein’s alleged victims has claimed she was forced to have sex with Brunel.) Two other potential Jeffrey Epstein co-conspirators, Nadia Marcinkova and Sarah Kellen, both operated businesses that were registered at the building. Former Israeli prime minister Ehud Barak, who was photographed outside Jeffrey’s townhouse in 2016, also regularly spent time at the condo.

“I don’t live in that building,” Mark told Crain’s. “I don’t monitor who uses those apartments.”

General Crimes

Sprecher

Broadway producer Ben Sprecher arrested on child porn charges

AP
8/13/19

A Broadway producer whose first big-budget show was derailed by a con man’s false financial promises has been arrested on child porn charges.

The producer, Ben Sprecher, was arrested Tuesday on federal charges of possession and distribution of child pornography.

It was not immediately clear who would represent him at a court appearance.

A criminal complaint prepared by a New York City police detective said Sprecher admitted he possessed child porn files.

The complaint said over 100 electronic files seized from Sprecher’s residence included a nearly 46-minute video of a pre-teen girl engaging in sex acts with an adult male.

Sprecher was the lead producer of “Rebecca,” a Broadway musical that was canceled before it was to open in fall 2012.

A stockbroker later admitted he’d flimflammed the producers.

Ben Sprecher, Notorious Broadway Producer With Scandal-Scarred Past, Arrested on Federal Child Pornography Charges: Sources

NBC 4
By Joe Valiquette
8/13/19

A Broadway producer with ties to one of the biggest fraud scandals in theatre history faces federal child pornography charges after an early morning raid at his Harlem home Tuesday, law enforcement sources familiar

with the case tell News 4.

Ben Sprecher was arrested on a criminal complaint issued by the U.S. attorney's office in Manhattan, the sources said. He was taken into custody by the NYPD and Homeland Security Investigations agents at his home on West 122nd Street, where a search warrant is being executed, the sources say.

The complaint said Sprecher allegedly admitted he possessed child porn files. It also says more than 100 electronic files were seized from his home, including a nearly 46-minute video of a pre-teen girl engaging in sex acts with a man.

It wasn't immediately clear who would represent Sprecher in court.

Broadway producer Ben Sprecher was arrested on federal child pornography charges in Manhattan Tuesday, law enforcement sources say. (Published Tuesday, Aug. 13, 2019)

Sprecher has a lengthy list of Broadway credits, most recently the London stage adaptation of the horror classic "The Exorcist." On his LinkedIn profile, Sprecher also credits himself as a theatre owner-operator, executive producer of the national tour of "Little House on the Prairie" and producer of the Broadway revival of "Brighton Beach Memoirs."

But he is perhaps most notorious for "Rebecca," a \$12 million musical that was set to open in the fall of 2012 -- until Sprecher and other investors found out the show's major backer did not exist.

A Long Island stockbroker named Mark Hotton with a long history of civil fraud lawsuits against him was arrested for scamming Sprecher and the show's other backers. He ultimately plead guilty and was sentenced to more than a decade in prison.

Sprecher was cleared of any involvement in the fraud, but left with his reputation sullied.

"Do I feel like I was duped? I was duped. I was raped," Sprecher told the New York Times in an Oct. 2012 interview.

According to Playbill, lawsuits related to the show's collapse were still being settled as recently as this past May.

Broadway producer Ben Sprecher arrested on child porn charges

NY Post

By Stephanie Pagones, Lorena Mongelli and Emily Saul

8/13/19

The Broadway producer behind the failed musical "Rebecca" was busted Tuesday for downloading child-porn — as disgusted neighbors said he once went around collecting signatures to get faster Internet.

"For nine years, he was not even able to say 'hello,' and suddenly he was quite friendly. ... He needed to have his Internet," a female resident said of accused kiddie-perv neighbor Ben Sprecher, 65, of Manhattan — who famously had his Broadhurst Theatre play "Rebecca: The Musical" torpedoed by a con man.

Sprecher — who has produced everything from Broadway's "Brighton Beach Memoirs" to "American Buffalo," as well as a national tour of "Little House on the Prairie" — is accused of downloading more than 100 videos and photos containing child pornography, according to court documents.

The sick stash included a nearly 46-minute video of a girl, described as between 10 and 12 years old, "engaging in various sex acts with an adult male," the papers allege.

Sprecher shared at least four of the twisted files with an undercover agent over three days in June, the documents claim.

He has admitted to downloading the illicit porn, court papers say.

Sprecher was picked up by Homeland Security and the NYPD around 6 a.m. at his tony townhome on West 122nd Street in Morningside Heights, authorities said. His family was home at the time, according to law-enforcement sources.

“The police officers went inside the building, and they then brought him out. [Sprecher] had a smile on his face — probably nervous and embarrassed about what was going on,” said D.B. Shark, a Web-based radio host and local.

“He is a pleasant guy” Shark said. “This is so shocking. But you never know who’s next-door.”

Sprecher allegedly amassed the online kiddie porn between at least October 2018 and this month.

Neighbors recalled how important the suspect’s Internet connection was to him a few years ago, with one resident, Jenny Raymond, saying he “made an effort to send out notifications [to get a faster speed] to all the neighbors” in 2014.

A Manhattan federal judge banned the producer from using the Internet at his arraignment Tuesday afternoon.

Sprecher’s public-defender lawyer, Martin Cohen, argued that his client needed at least his e-mail to work, to which the judge replied, “He doesn’t seem to be doing too much these days.”

Sprecher’s townhome is currently on the market for nearly \$3.7 million.

Sprecher, who has been married for 25 years and has two adult children, also was barred by the judge from perusing any kind of porn and ordered “to avoid all unsupervised contact with minors.”

Prosecutors argued that he should be fitted with a monitoring device, too, but the judge refused.

Sprecher was released on \$100,000 bond and ordered back to court Sept 12. His lawyer declined comment after the hearing.

In 2012, Sprecher and “Rebecca” co-producer Louise Forlenza were scammed by former Long Island stockbroker Mark Hotton, who netted \$60,000 in fees from them with promises of lining up \$4.5 million in investments for their psychological thriller.

Hotton then claimed one of his big investors died suddenly of malaria while on safari, and that KO’d the money pot. He pleaded guilty to money-laundering conspiracy and was sentenced to 34 months behind bars.

Then in 2017, Sprecher cried on the stand in Manhattan court while testifying against his former press agent, who he and Forlenza sued for \$10 million, claiming the rep later scared away real investors who might have been able to save the production. The publicist was ordered to pay the pair \$90,000.

Broadway producer Ben Sprecher arrested on child porn charges

NY Daily News

By Stephen Rex Brown and Thomas Tracy

8/13/19

A Tony award-nominated Broadway producer was busted Tuesday for possession of a sick stash of child porn, prosecutors said.

NYPD and Homeland Security investigators raided Ben Sprecher's home in Morningside Heights on W. 122nd St. at 6 a.m., seizing an external hard drive that contained "numerous files containing child pornography," prosecutors said.

Sprecher, who produced the Tony-nominated "Fortune's Fool" in 2002 and a revival of "The Odd Couple" in 2005, shared around 100 child porn files on a file-sharing network beginning in October 2018.

The 65-year-old was charged with possession and distribution of child pornography. The most serious charge carries a maximum sentence of 20 years in prison.

After being read his rights the disgraced producer admitted he "accessed" and "downloaded" perverted child porn files, according to a criminal complaint in Manhattan Federal Court.

One video cited by an NYPD detective on the case showed a preteen girl engaged in sex acts with an adult man, according to the five-page complaint. The video was over 45 minutes long. The complaint says that Sprecher shared four child porn files through the network with law enforcement.

"Sexualizing young children is unconscionable; and this Office and our law enforcement partners will continue to utilize all of the expertise and resources available to shine a light on every dark corner where it is produced, shared, and possessed," Manhattan U.S. Attorney Geoffrey Berman said.

Sprecher, who is married with two grown children, declined comment after being released on \$100,000 bond. He grabbed the camera of a Daily News photographer as he left the courthouse.

"Mr. Sprecher has engaged in this conduct over a lengthy period of time," Assistant U.S. Attorney Samuel Rothschild said. "It's not a one-off."

Sprecher's attorney Martin Cohen asked that he be allowed to have access to the internet for work.

"Mr. Sprecher works as a producer," Cohen said, adding that his client needed to be able to set up meetings and read email.

"He doesn't seem to be doing too much these days," Magistrate Judge Henry Pitman said. He ordered Sprecher not use the internet or have unsupervised interactions with minors.

Despite his extensive credits, Sprecher is probably best known for his involvement in the "Rebecca" debacle in 2012. Sprecher thought he had lined up financial backing for a Broadway run of the musical, only to learn he had been tricked. A con man, Mark Hotton, had fabricated the existence of a South African investor who supposedly died before he could pour \$4.5 million into the show. Sprecher had to pull the plug on the production, costing 130 people jobs.

Hotton was sentenced to nearly three years in prison for the scam in 2014.

Sprecher was cleared of any involvement in the scam, but the fallout damaged his reputation. A civil suit over the fiasco featured allegations that Sprecher had failed investors and "hid the truth."

Violent and Organized Crime

Walter

Tekashi69 bodyguard sentenced to more than 5 years behind bars for restaurant shooting

NY Daily News

By Trevor Boyer and Leonard Greene

8/14/19

Brooklyn rapper Tekashi69's former bodyguard was sentenced Wednesday to 62 months in prison for his admitted role in a shooting at an Upper East Side restaurant.

Faheem Walter's attorney argued that he had already suffered enough after being shot and nearly dying in the bloody Oct. 26, 2018 fracas that began when private security guards would not allow him into Phillipe Chow on E. 60th St.

Tekashi69, whose real name is Daniel Hernandez, went to the restaurant to meet with a record executive. Hours earlier, Hernandez was sentenced to 4 years probation in connection with a video he made of a 13-year-old girl having sex.

Walter and another member of Tekashi's entourage were turned away from the eatery, but later returned and hit one of the security guards over the head with a chair.

The guard pulled a licensed handgun and fired twice, hitting Walter in the torso. Walter was rushed to a hospital, and was later charged with gang assault.

"He almost didn't make it," his defense attorney, Edward Sapone, said in Manhattan Federal Court. "The bullet ripped through his intestine."

Surgery saved Walter, but resulted in hundreds of stitches, a scar from his collarbone to his belly button and continual infections at the site of his colostomy.

Sapone argued the gory consequences of the shooting would serve as a deterrence to the public — and a reminder to Walter not to commit further crimes.

Still, his lawyer said, Walter took responsibility for his role in that shooting by making a guilty plea.

"He picked the fight, with the wrong guy," Sapone said.

But prosecutors said Walter was actually an enforcer for the Nine Trey Bloods, a gang associated with Tekashi, and even admitted on recordings to carrying a gun for Nine Trey.

"He was kind of a go-to guy if something needed to be taken care of," said Assistant U.S. Attorney Michael Longyear.

Longyear asked the judge to take into account an Instagram Live video that Walter broadcasted June 1 from a contraband smartphone within his cell at the Metropolitan Correctional Center.

Walter, 29, bragged to his online audience that he was "still standing," Longyear said.

Though Walter made no threats, references to the gang, or denials of his guilt in the broadcast, "To us it was a little surprising... that he would still engage in this conduct. He's breaking MCC's rules," Longyear explained.

Judge Paul Engelmeyer acknowledged that Walter never actually used the gun he carried for the gang. But he still participated in the gang's violent activity.

"You appear to have learned a very hard lesson a very hard way," Engelmeyer said.

Walter could be out of jail in three years with good behavior, authorities said.

Sapone said Walter joined the entourage to work for Tekashi, not to get involved with the gang.

"That's not the job he signed up for," Sapone said. "He wishes he never met Hernandez."

Tekashi 69, a trash-talking hip-hop star, pleaded guilty to nine racketeering, gun and drug charges and flipped on his former friends in January. He remains in custody and hopes his cooperation will convince a judge to impose a light sentence.

Civil Division

NYCHA

NYCHA's overtime spending climbs again, hitting \$95 million

NY Post

By Nolan Hicks

8/13/19

The city's budget has sprung a big leak.

Overtime spending at the city's embattled Housing Authority ballooned to \$95.5 million last year, as employees labored to correct the scandalous living conditions that led to a partial federal takeover of the agency, new payroll figures from the Empire Center think tank show.

Some of the biggest payouts went to NYCHA's plumbers — one of whom took home more than a quarter of a million dollars in total pay thanks to massive overtime.

Robert Procida racked up \$181,422 after working 1,668 hours in extra shifts. That's an average of 32 hours of overtime a week.

It brought his total take-home pay to \$286,246 for the year, the Empire Center found.

More than half of NYCHA's 13,000 employees worked extra time between July 2018 and June 2019, according to an analysis of payroll data by the conservative group.

Overall, New York City spent \$1.9 billion on overtime in its most recent budget, according to the figures.

NYCHA's overtime spending has risen in recent years, growing 58 percent from the \$60.6 million it spent during the city's 2015 budget year.

The \$95.5 million it spent during the most recent budget is also up.

1 percent from the \$94.5 million it spent during the 2018 budget, which ended in June 2018.

A NYCHA spokesman attributed the overtime surge in recent years to growing repair needs and new efforts to combat the agency's chronic heat and water outages, which are often linked to its decrepit pipes and plumbing in

its 316 housing developments.

That's borne out in who scored the overtime.

The authority's 19 plumbing supervisors scored the biggest average overtime payments, earning on average \$71,505 from extra shifts.

They are charged with supervising and directing the work done by NYCHA's plumbers and other staff in connection with the water, drainage and gas systems at the sprawling public-housing agency. All told, they racked up a combined \$1.4 million from 12,492 hours of overtime.

In addition to Procida, who has worked for NYCHA since 1987 and who could not be reached for comment, the other biggest plumbers on the overtime list included Daniel Hock Jr., who got \$130,901.16 in overtime, and José Ortiz, who got \$124,343.01.

The union representing NYCHA's plumbers, United Association Local 1, did not return a message from The Post seeking comment.

"Our goal is to improve productivity and deliver the highest level of service to our residents, and we will use all tools at our disposal, including overtime," said NYCHA spokesman Chester Soria.

Securities and Commodities Fraud

Margulies

NY Jury Quick To Convict Marketing Pro In Snack Food Fraud

Law 360

By Pete Brush

8/13/19

A Manhattan jury needed a mere 90 minutes Tuesday to find a marketing professional guilty of helping a California woman steal \$2.8 million from snack and pet food investors, with prosecutors pointing to an "avalanche" of forgeries he created.

The jury of eight women and four men wasted no time convicting Joel Margulies, 74, on counts of securities and wire fraud, conspiracy, identity theft and illegally transporting a gun after a trial before U.S. District Judge Jed S. Rakoff that opened Aug. 5.

Judge Rakoff set a Dec. 16 sentencing date for Margulies, who must also resolve a drug charge that was severed from the case by another judge prior to trial. After prosecutors indicated they still intend to pursue that charge, the judge pressed them to resolve it quickly, take it to trial or drop it.

"I think it's a royal waste of time," Judge Rakoff said.

Along with his two co-defendants, Lisa Bershan and Barry Schwartz, Margulies has now been found guilty of duping investors in two Bershan ventures — Starship Snacks Corp. and All American Pet Co. Inc. — from 2014 to 2017. Bershan and Schwartz, who are married and hail from San Diego, entered guilty pleas. Prosecutors called Margulies a "one-man fake document factory" who helped by creating fake tax, bank and legal papers — sometimes using the names of real people he knew or had heard of.

Documents put before the jury showed that Margulies assisted Bershan in telling investors that beverage maker Monster Energy Co. planned to purchase her snack food venture and that food giant Nestle had its eye on All American Pet Co. In fact, the pet food product was beset by production problems, including mold, and the snack venture was a mere concept.

Margulies adopted the name of a real Nestle employee on a fake letter of interest in the pet food venture sent to investors and also used the name of a real Manhattan lawyer with whom he had been acquainted, documents showed.

Texts between Bershan and Margulies in December 2016 showed them both mocking investors, who had begun to suspect foul play as the two companies foundered.

"Now I am laughing," Bershan wrote.

"Laughing is a good thing," Margulies replied.

In 2016, Margulies, who resides in Tennessee, also sent Bershan, who was in New York City, a Smith & Wesson pistol and ammunition. In an email, he told her there was "nothing legal" about the shipment and he urged her to keep the gun under lock and key even though brandishing it would give her a "hormone surge."

After his arrest in October 2017, Margulies told the FBI that Bershan was "afraid" because investors were catching on and threatening her. She wanted a gun for protection, he said.

Margulies' lawyer, Brent Horst, conceded the gun charge during opening statements, but on the fraud-related counts he argued his client was duped by Bershan and unwittingly assisted her because he had fallen in love.

But on Tuesday, prosecutor Christine Magdo showed the jury bank records that showed Margulies took at least \$90,000 from the fraud, not including other benefits he received, including living for a time with Bershan in the upscale Bel Air neighborhood in Los Angeles.

Margulies regularly instructed Bershan about how to deal with investors, including helping her craft a story with a "rainbow" at the end to keep them satisfied, according to a text message. That proved he was no mere dupe, Magdo said.

"He knew exactly what he was doing," Magdo said.

At closings, Horst returned to the love narrative, showing the jury photos of Bershan seemingly living the high life.

"He acted foolishly. He had strong feelings for her," Horst said, dismissing dozens of damning pieces of evidence as "just noise."

Horst said after the verdict that he respects the jury's decision. Jurors declined comment on their way out of the Daniel Patrick Moynihan U.S. Courthouse in Lower Manhattan.

Margulies is represented by Brent Horst of Horst Law.

The government is represented by Negar Tekeci and Christine Magdo of the U.S. Attorney's Office for the Southern District of New York.

The case is USA v Bershan et al., case number 1:17-cr-00638, in the U.S. District Court for the Southern District of New York.

[Sharma and Farkas](#)

Centra Execs Can't Use Privileged Chats To Skirt Indictment

A New York federal judge on Tuesday denied the co-founders of a defunct cryptocurrency company's attempt to dismiss a criminal indictment against them over the divulgence of privileged documents to prosecutors.

Sohrab "Sam" Sharma and Robert Farkas, co-founders of the embattled and shuttered cryptocurrency company Centra Tech, sought to dismiss their criminal indictment related to fraud charges stemming from Centra Tech's \$25 million initial coin offering. They alternatively asked for the removal of the existing prosecution team for having been potentially exposed to privileged documents during the discovery process.

Sharma further asked the judge to suppress evidence obtained during his arrest at his apartment in Florida. In a partial win, his request to suppress statements made during his arrest was granted.

"To the extent that the prosecution team viewed any of the potentially privileged documents, defendants have shown neither that the government's conduct was 'manifestly and avowedly corrupt' nor that defendants were prejudiced by the disclosures," the judge said. "Defendants have not shown that the government intentionally intruded on the attorney-client privilege."

Sharma and Farkas, along with former Centra Tech chief operating officer Raymond Trapani, were charged with running an unregistered initial coin offering from July to October 2017 for Centra Tokens, promoted as a vehicle for developing a currency exchange platform and debit card that would allow users to spend cryptocurrency. According to prosecutors, investors in the ICO were misled into believing Centra Tech had partnerships with major payment card companies.

Prosecutors allege the trio lied about already having relationships with Visa Inc., for example.

Trapani has since pled guilty to a variety of securities and wire fraud charges.

With a trial set for later this year, Sharma and Farkas asked U.S. District Judge Lorna G. Schofield in April to throw out their indictment. They said that before their arrests in April 2018, the government had used search warrants to obtain from Slack Technologies Inc. copies of communications Sharma and Farkas had with both in-house and outside counsel.

The government said it had a walled-off "taint" team review the documents gleaned from the Slack search warrant for privileged material, but Sharma and Farkas said the documents ultimately handed over in discovery were "clearly privileged" and revealed that the taint team's review was "woefully inadequate."

The government admitted that two agents may have seen potentially privileged information in 15 documents out of a total of 1.3 million files from the "Slack Warrant."

"Even if [the agents] had seen the potentially privileged documents, defendants offer no explanation as to how this exposure prejudiced their defense," the judge said. "None of the potentially privileged documents [except one] has any apparent bearing on what are likely to be the issues in this case, and consequently, they would not give the government any unfair 'tactical advantage' and insight into defendants' 'means of defeating the charges.'"

Sharma also requested that the court suppress statements he made to the FBI during his arrest that came after he was put in handcuffs but before he was read his Miranda rights. He further asserted that, because those statements led law enforcement into his bedroom, the gun, laptop and smartphone they seized there "should be suppressed as 'fruits of the poisonous tree.'"

The government and Sharma had already gone back and forth on this topic in May, with prosecutors asking that Sharma's efforts be ended without a hearing.

The judge largely sided with the prosecutors on Tuesday, denying the former executives' motion to suppress a firearm, iPhones and a laptop, and denying as moot a motion to suppress Sharma's statement that he had "not yet" been criminally convicted when asked.

Counsel for Farkas said late Tuesday that they intend to file a motion for reconsideration.

The government declined to comment.

Counsel for Sharma did not respond to requests for comment Tuesday evening.

The government is represented by Samson Enzer and Negar Tekei of the U.S. Attorney's Office for the Southern District of New York.

Sharma is represented by Gennaro Cariglio Jr.

Farkas is represented by Paul D. Petrucci.

The case is U.S. v. Sharma et al., case number 1:18-cr-00340, in the U.S. District Court for the Southern District of New York.

Matters of Interest

Obama-era counsel Greg Craig's trial postponed; new jury to be selected

Washington Times

By Jeff Mordock

8/13/19

A federal judge agreed to restart the trial of former Obama White House lawyer Greg Craig and pick a new jury after his defense team complained Tuesday that the panel's having been selected out of public view could deny him the right to a fair trial.

Judge Amy Berman Jackson said she'll take a do-over Wednesday, selecting a new jury and pushing back the opening arguments of the trial until later this week.

Mr. Craig's lawyers raised the objection Tuesday, saying Judge Jackson's decision to close the courtroom a day earlier while lawyers questioned potential jurors tainted the selection process.

Mr. Craig's team said that violated his right to a public trial on a charge of lying to federal investigators about his work on behalf of Ukrainian officials.

Judge Jackson was incredulous when the lawyers raised the objection, asking defense attorney William Murphy whether they needed to start over. She later relented telling both sides there was "no choice" but to pick new jurors.

Francesco Campoamor-Sanchez, a prosecutor with the U.S. Attorney's Office in Washington, D.C., told the judge he agreed with the decision to start anew.

Judge Jackson said starting from scratch would be messy. She initially said the delay could postpone the trial until October while an all-new jury pool was summoned. She then took a recess, consulted with the jury office, and returned to say roughly 100 potential jurors would be available Wednesday.

“It’s a little bit of a setback, but ultimately I think it’s going to delay us by two to three days,” she said.

Opening arguments, which had been expected Tuesday, will now occur either Thursday or Friday. It also means the trial could continue until after Labor Day, Judge Jackson said.

Typically, courtrooms are open to the public during jury selection.

Judge Jackson on Monday cleared the room but let the press stay for the first part, where she announced the questions she would ask. Jurors answered her questions and those of the lawyers privately.

She admitted Monday she’d never done that before but defended the move, saying some jurors objected to answering questions in public in such a high-profile case.

One juror discussed a mental health issue while another talked about being a crime victim, she said.

Judge Jackson asked potential jurors about their knowledge of special counsel Robert Mueller, President Trump’s ex-campaign chairman Paul Manafort and other figures in the 22-month Russia investigation.

Mr. Craig, who served as White House Counsel from 2009 to 2010, faces one charge of making false statements and concealing information from Justice Department investigators investigating violations of foreign lobbying laws.

Prosecutors say he misled authorities about the work he performed for the Ukrainian government, which occurred after he left the Obama administration.

Manafort had tapped Mr. Craig and his law firm, Skadden Arps, to write a report whitewashing a former Ukrainian president’s prosecution of a political rival. Prosecutors say his efforts to pitch the report to U.S. media outlets amounted to foreign lobbying.

Epstein Saga Puts Spotlight on Crime Victim’s Rights Act

NY Law Journal

Robert J. Anello and Richard F. Albert

8/14/19

The significance of the Crime Victims’ Rights Act (CVRA), which is intended to guarantee crime victims a role in federal criminal proceedings, has been highlighted in the case of Jeffrey E. Epstein, the financier accused of sexually trafficking underage girls. Because the government’s noncompliance with the CVRA in negotiating Epstein’s plea deal in 2008 led to the former U.S. Attorney for the Southern District of Florida, Alexander R. Acosta, losing his cabinet position as Secretary of Labor, practitioners can expect prosecutors and judges to be more focused on the CVRA going forward.

Worthy of the attention of white-collar practitioners is the currently pending motion by two victims in the Epstein case to rescind the key portions of Epstein’s non-prosecution agreement—those that barred his prosecution in the Southern District of Florida—based on the court’s prior finding that the government violated the CVRA. Although Epstein’s death this past weekend in an apparent suicide now makes it unlikely that the court will rule on that aspect of the motion, the possibility that a violation of the CVRA could result in the rescission of a non-prosecution agreement has implications for white-collar practitioners and their clients.

Crime Victims’ Rights Act

Congress enacted the CVRA, codified at 18 U.S.C. §3771, in 2004 “to make crime victims full participants in the criminal justice system.” It requires federal employees engaged in criminal investigations and prosecutions “to make their best efforts to see that crime victims are notified of, and accorded,” a list of ten enumerated rights. These rights have been found to attach before formal charges are filed and courts are instructed to “ensure that crime victims are afforded” the rights therein.

Among the rights guaranteed crime victims by the CVRA is the right to “reasonable, accurate, and timely notice” of any public court or parole proceeding and the right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding. In addition, the CVRA mandates that prosecutors and government attorneys confer with crime victims and give them timely notice of any plea bargain or deferred prosecution agreement.

The statute provides that victims or their lawful representatives may seek to enforce these rights by bringing a motion for relief to compel prosecutors to comply in the district court in which the case is being prosecuted or, if no prosecution is underway, in the district in which the crime occurred. The CVRA requires district courts to take up such motions “forthwith” and appellate courts to decide within 72 hours of filing any challenge of a denial of rights brought by mandamus petition. Although the statute makes clear that in no case should a violation of the CVRA provide grounds for a new trial, under the clause of the act codified at 18 U.S.C. §3771(d)(5), a victim may make a motion to re-open a plea or sentence if: 1) the victim has asserted the right to be heard before or during the proceeding at issue and such right was denied; 2) the victim petitions the court of appeals for a writ of mandamus within 14 days; and 3) the accused has not pled guilty to the highest offense charged.

In reviewing the history of the CVRA in its 2016 decision in *Federal Insurance Company v. United States of America*, the U.S. Court of Appeals for the Second Circuit noted that because the act began as a proposed constitutional amendment, the law is “relatively sparse [in] technical detail.” That lack of detail has left open questions regarding the appropriate remedy for the government’s violation of the statute. Congress specifically provided that violations do not result in a civil cause of action for damages, but rather directed the attorney general to “promulgate regulations to enforce the rights of crime victims and to ensure compliance by responsible officials” The statute further states that the attorney general or his/her designee be the final arbiter of any filed complaint.

The Justice Department enacted regulations to outline the procedures a crime victim shall follow when he or she believes their CVRA rights have been violated. 28 C.F.R. §45.10. The regulations provide that because the Justice Department’s Victims’ Rights Ombudsman is the “final arbiter,” its determination is not subject to judicial review. When violations are found, the responsible employee is required to undergo training on victims’ rights. If the violation was found to be willful or wanton, the ombudsman is authorized to recommend “a range of disciplinary sanctions” which may include written reprimands, suspensions, reductions in grade or pay, removals or furloughs.

The Epstein Case

In 2005, the Federal Bureau of Investigation and local police in Palm Beach, Florida, initiated an undercover investigation of Epstein after receiving allegations that he had molested an underage girl at his Florida mansion. The investigation is claimed to have revealed that Epstein had engaged in similar behavior with multiple underage girls and had organized a sex ring where minor girls allegedly were “lent” to other individuals.

The FBI’s investigation led to the preparation of a 53-page indictment against Epstein. The indictment was never presented to a grand jury, however. In 2008, federal prosecutors, led by Acosta, negotiated a non-prosecution agreement with Epstein which allowed him to plead guilty in state court to lesser charges of soliciting a minor for prostitution. Epstein served 13 months at the Palm Beach County Sheriff’s Department Stockade, during which time he was allowed to leave custody and work from his office six days a week.

A series of articles from The Miami Herald exposed the nature of a so-called secret deal that allowed Epstein to evade federal sex trafficking charges. Two of Epstein’s victims have cited the government’s alleged failure to

comply with the CVRA's requirements that prosecutors confer with crime victims and provide timely notice of proposed plea-bargaining arrangements in a long running litigation in the U.S. District Court for the Southern District of Florida.

After initially filing an emergency petition in that court for relief under the CVRA in July 2008, the victims filed a motion in 2011 seeking a finding that the government violated their CVRA rights. The government sought dismissal of the case. Although details of the arguments are elusive because the briefing remains sealed, the decision of District Judge Kenneth E. Marra denying the motion, *Doe v. United States*, 950 F. Supp. 2d 1262, 1266 (S.D. Fla. 2013), reveals that the government argued the victims did not have standing because the relief they sought—the vacation or rescission of the non-prosecution agreement to enforce their CVRA rights—was legally impossible. The government argued that rescission of an otherwise valid agreement is prohibited by constitutional due process even if the agreement was entered into in violation of the CVRA. Further, the government argued that even if the court could set aside the agreement, such ruling would be futile because the prosecutors' office legally was bound to abide by the terms of its earlier contract.

Judge Marra found as a threshold matter that the CVRA “authorize[d] the rescission or ‘re-opening’ of a prosecutorial agreement, including a non-prosecution arrangement—reached in violation of a prosecutor’s conferral obligations under the statute.” Noting that §3771(d)(5) specifically contemplates the re-opening of a plea or sentence where the government has not complied with the CVRA, the court, without detailed analysis, rejected the government’s due process claim. The court further relied on case law and legislative history to expansively read the statute to permit the rescission of non-prosecution agreements just as it permits the rescission of plea agreements.

In a subsequent motion for partial summary judgment, the two victims asserted that prosecutors violated their right to confer under the CVRA. On Feb. 21, 2019, Marra issued a decision agreeing with the victims, making detailed findings that prosecutors violated the CVRA by failing to confer with the two victims when they entered into the 2008 non-prosecution agreement with Epstein. The court found “particularly problematic” the government’s concealment of the 2008 agreement and statements that misled victims to believe that federal prosecution was still possible.

Appropriate Remedy

Still at issue in the case is the appropriate remedy. In briefing filed in May 2019, the victims have sought a variety of equitable remedies, including a letter of apology from the U.S. Attorney’s Office and monetary sanctions. In addition, and most significantly to white-collar practitioners, the victims seek rescission of the portion of the non-prosecution agreement precluding federal prosecution of Epstein in the Southern District of Florida. The victims argue that the CVRA’s procedural restrictions set forth in §3771(d)(5) do not apply because they are not seeking to re-open a plea: Epstein never pleaded guilty in federal court. The victims also argue that the court’s findings that Epstein joined with the government deliberately to keep his agreement from the victims means that he cannot be heard to complain about losing the benefit of the resulting illegal agreement.

The government asserts that none of the equitable relief sought by the victims is authorized by the CVRA because the statute specifically refers enforcement to the Justice Department. The government further argues that partial rescission of the non-prosecution agreement is inappropriate because (1) it would harm those victims who do not want the case re-opened and desire to remain anonymous; (2) it would have the perverse effect of allowing the government to disregard its obligations under the agreement (i.e., an immunity grant) despite the fact that Epstein has complied with his obligations; and 3) it contravenes the basic tenets of contract law.

The government further points out the inconsistency in the victims’ position. The victims asserted an expansive reading of §3771(d)(5) of the CVRA, which allows for rescission in limited circumstances, beyond pleas or sentences to permit the possibility of rescission of the non-prosecution agreement at issue, and the district court accepted that position in its 2013 decision. But the victims now argue that the express procedural requirements of §3771(d)(5)—which they cannot satisfy—do not apply. According to the government, the petitioners “cannot have it both ways.”

The court's decision is pending as of the preparation of this article.

Implications for White-Collar Cases

Recognizing that Epstein's death may moot the question, strong reasons would nevertheless have militated against permitting rescission of Epstein's non-prosecution agreement. The government's position that the CVRA was intentionally drafted to narrowly limit the remedies available to victims are well taken, and the notion that the victims can expand the reach of §3771(d)(5) to reach non-prosecution agreements but be relieved of its express procedural requirements is hard to square.

Further, the constitutional due process implications for a defendant raised by such a result appear substantial. Courts long have recognized that plea or similar agreements in criminal cases are unique contracts raising special due process concerns for fairness to defendants, and on that basis have required the government to specifically perform such agreements or completely relieved a defendant of the impact of the plea. Because Epstein served his full state court sentence, he could not have been relieved of the impact of his plea. However unduly lenient some may now view it, the partial rescission that the victims sought years after the fact appears unsupported in the case law and unsupportable on basic contract principles.

Further, even before Epstein's death, the unusual circumstances of the case might have rendered moot the victims' rescission demand. Subsequent to the filing of the parties' remedies briefs, on July 8, 2019, the U.S. Attorney's Office for the Southern District of New York announced that it had filed charges against Epstein for sex trafficking of minors in New York and Palm Beach Florida between 2002 and 2005. That prosecution appeared to vindicate the two victims' demands for a federal prosecution and to have provided them an avenue to exercise their CVRA right to confer with prosecutors.

But experience teaches that a bad set of facts can push the law. Here, the misconduct of which Epstein was accused is egregious, and public furor was exacerbated by the perception that he used his wealth and privilege to manipulate the criminal justice system, with the knowing assistance of prosecutors, in violation of the terms and intent of the CVRA.

The attention and publicity that a ruling rescinding Epstein's non-prosecution agreement would have generated likely would embolden victims and their representatives to assert their rights to be informed about and confer with prosecutors about plea agreements. That would be unwelcome to white-collar practitioners, who often seek to pursue efforts to dispose of cases with the least possible media and victim attention. In significant business-related prosecutions, a large number of persons and entities may claim to be victims; dealing with them can create logistical and practical difficulties for prosecutors, who typically prefer the advantage of a maximum level of control over their case.

Further, because many potential prosecutions of corporations are resolved by non-prosecution agreements and deferred prosecution agreements—both of which are generally not considered “plea” agreements—a ruling extending the CVRA's rescission remedy to such agreements but not enforcing its strict procedural requirements would inject significant new uncertainty into their finality. Such a ruling might have generated a fair number of questions from in-house corporate counsel in industries, like financial services and health care, that tend to get regular prosecutorial and regulatory enforcement attention.

Conclusion

The alleged victims of Jeffrey Epstein already have used the CVRA to successfully bring down a former U.S. attorney. But for Epstein's death, their effort to use the statute to rescind Epstein's non-prosecution agreement could have had even greater implications for the criminal justice system.

Donziger Faces Criminal Contempt Prosecution Team at Seward & Kissel

NY Law Journal
By Jack Newsham
8/13/19

Steven Donziger, the suspended attorney who was ordered to pay an \$800,000 judgment for allegedly rigging an Ecuadorian lawsuit against Chevron Corp., is now being prosecuted for criminal contempt by court-appointed attorneys at Seward & Kissel.

Donziger's cutthroat legal war with Chevron has raged for years, but has significantly escalated in recent weeks. On July 31, U.S. District Judge Lewis Kaplan of the Southern District of New York ordered Donziger to explain why he shouldn't be prosecuted for allegedly failing to turn over assets to Chevron and comply with discovery orders.

In an unusual twist, the judge also appointed Rita Glavin, Brian Maloney and Sareen Armani of Seward & Kissel to prosecute Donziger for criminal contempt. In appointing a private prosecution team, the judge cited federal criminal rules and an explanation by the U.S. Attorney for the Southern District of New York that the office declined to take up the case referral "on the ground the matter would require resources that we do not have readily available."

The judge gave Glavin and her colleagues the power to issue subpoenas and to seek and execute search warrants.

For now, Donziger—who is represented by Andrew Frisch—is wearing an ankle bracelet and has been made to surrender his passports, according to an Aug. 9 letter filed by Glavin. Donziger has been released on \$800,000 bond secured by his apartment and signed off by two people, one of whom is his wife.

The criminal case is the latest development in a long-running legal war. Donziger represents a group of Ecuadorians who sued Chevron for widespread environmental contamination and won a multibillion-dollar ruling in Ecuadorian courts. Chevron said the decision was procured by fraud, however, and has fought efforts to enforce the judgment and won a racketeering suit against Donziger.

The oil company and its legal team at Gibson, Dunn & Crutcher have lately been trying to seize Donziger's assets. Donziger and his law firm Donziger Law were ordered in July to pay Chevron \$3.4 million in attorneys' fees after Lewis agreed to hold him in civil contempt.

Kaplan's appointment of the Seward & Kissel lawyers as special prosecutors isn't without precedent. A special prosecutor was appointed to investigate the leak of evidence in a political corruption case in Rhode Island and ultimately racked up \$152,247 in legal bills, paid by the Administrative Office of U.S. Courts, according to a 2006 decision by the U.S. Court of Appeals for the First Circuit.

Like the First Circuit case, Lewis appointed the Seward attorneys under Federal Rule of Criminal Procedure 42(a)(2). The Administrative Office's practice of paying appointed special prosecutors' fees is "usual in Rule 42(a) appointments," said the 2006 decision.

Harry Sandick, a former prosecutor and white-collar defense partner at Patterson Belknap Webb & Tyler, said he couldn't recall a lawyer in private practice being appointed to prosecute a case from his time in the Southern District, although he did recall SDNY prosecutors taking up a contempt case against artist Shepard Fairey, who admitted to manipulating evidence in a copyright suit. He noted that Glavin, who previously worked nearly 12 years for the Justice Department, was an experienced prosecutor and defense lawyer.

"Hopefully, she'll be able to resolve this matter in a way that is fair to all sides," he said.

This case is a reunion of sorts for Glavin and Frisch, Donziger's lawyer. They represented co-defendants in the Manhattan District Attorney's case against Dewey & LeBoeuf executives. "Ms. Glavin and I have worked very well together in the past, and I anticipate that she and I will have many constructive conversations to determine whether there is a viable way to resolve the case short of trial," Frisch said in an Aug. 11 letter.

"If not, we will try the case," Frisch's letter continued. "Mr. Donziger is fully aware of the possible consequences in the event of an unfavorable verdict and will face them if and when a trial so results."

Donziger called the charges "an act of Trump-style retribution" by Kaplan in an Aug. 1 tweet.

Frisch, who runs his own firm, said a follow-up conference was set for late September but declined to comment on the case generally. Glavin declined to comment.

Randy Mastro, a partner at Gibson Dunn who represents Chevron, would only say of the criminal prosecution that it is a separate matter from the civil suit "to which Chevron is not a party."

Jail Where Epstein Died Has Record of Security Blunders

Courthouse News
By Adam Klasfeld
8/13/19

Months after the Metropolitan Correctional Center was celebrated for keeping hold of Joaquín "El Chapo" Guzmán — the drug lord who famously broke out twice from maximum-security prisons in Mexico — Jeffrey Epstein's reported suicide there embroils a criminal probe that implicates some of the most powerful men in the world in child sex trafficking.

Beneath its fortress-like public image, however, the 12-story structure where Epstein was found dead on Saturday is no stranger to high-profile security failures.

This photo shows the Manhattan Correctional Center in New York on July 1, 2019. (AP Photo/Richard Drew) One pending lawsuit accuses MCC of covering up the fatal beating of inmate Roberto Grant in 2015 as an overdose. Another inmate, Reza Zarrab, purports to have survived an attempted assassination at the MCC two years later, retribution for implicating Turkish President Recep Tayyip Erdogan in an Iranian money-laundering scheme that is the biggest ever charged in U.S. history.

Inside the MCC, sex and bribery scandals abound, as do ubiquitous reports of smuggled cellphones, one of which purportedly allowed former CIA engineer Joshua Adam Schulte to leak classified data from prison.

Months before the WikiLeaks source purportedly got hold of multiple contraband cellphones, including at least one heavily encrypted device, former MCC guard Victor Casado pleaded guilty in April 2018 to taking a \$45,000 bribe from Zarrab to smuggle in a cellphone, alcohol, Dayquil and other items.

Accusations of spectacular security breakdowns inside the MCC were a running feature of Zarrab's case. Midway through testimony that stretched for more than a week before U.S. District Judge Richard Berman — who also presided over the Epstein case — terror suspect Faouzi Jaber filed a lawsuit accusing Zarrab of raping him at the MCC.

Zarrab called those suspiciously timed claims "fiction," and Jaber later withdrew his claims.

Against this backdrop, an ex-federal prosecutor offered some insight as to why the MCC's reputation has been little worse for the wear.

“The problem is that you have a code of silence,” the prosecutor said in an interview, speaking on the condition of anonymity. “Guards do not talk about other guards, and prisoners do not talk about anybody. There are the rare occasions where prisoners bring civil rights suits, but it’s a very strong culture of silence.”

In 2007, the culture of silence was of little help to former MCC guard Nicholas Defonte, convicted of having sex with a female inmate.

Cameron Douglas, the eldest son of “Basic Instinct” star Michael Douglas, features in another lurid report of MCC misconduct. The drug-addicted celebrity scion told a court eight years ago that he got his former lawyer, Jennifer Ridha, to smuggle him Xanax in her bra. Ridha insisted in a tell-all that she kept the pills in her pants pockets.

In the 1990s meanwhile an MCC security lapse nearly cost the government its key cooperating witness in the foiled Bojinka plot, a plan to assassinate Pope John Paul II and blow up two U.S. airliners.

While being held at MCC after his 1995 extradition from Malaysia, Wali Khan Amin Shah nearly escaped the MCC by climbing to an unsecured portion of the prison’s roof. Khan became a cooperating witness against his Bojinka co-conspirators, suspected 9/11 mastermind Khalid Sheikh Mohammed and Ramzi Yousef, who carried out the World Trade Center bombing in 1993.

More recently, the government faced harsh words from U.S. District Judge William Pauley III in a case that puts the MCC at the heart of a murder cover-up.

“I read the autopsy report,” Pauley said in a July hearing about the death of former MCC inmate Roberto Grant. “He was beaten to death in a dormitory that people are supposed to be supervising, right?”

Grant suffered blunt-force trauma, according to his autopsy, but his family says MCC staffers labeled the death an overdose despite finding no trace of drugs in Grant’s system.

At last month’s hearing, a government attorney insisted that Grant died quickly and that the prison was not negligent. Pauley did not immediately issue a ruling, but his sharp questions left little doubt as to his leanings.

“I really don’t know what duty [the U.S. Bureau of Prisons] believes they do owe to prisoners after what I just heard,” Andrew Laufer, an attorney for Grant’s family, told the judge at the time.

As for the Epstein case, Attorney General William Barr already has observed “serious irregularities” in how the tycoon fared under Bureau of Prisons guidelines. Epstein was reportedly removed from suicide watch before his death and transferred to a section of the jailhouse requiring corrections officers to check in on him every 30 minutes.

Reacting to reports that Epstein was held in MCC’s infamous “9 South” wing, a former federal prosecutor said: “I’ve been on the ninth floor many times, and it really is hermetically sealed from the rest of the population.”

The Washington Post reported that “several” hours passed without such a check-in before Epstein’s death and that the staffer assigned to keep tabs on him was not a corrections officer.

New York City Medical Examiner Barbara Sampson has not yet completed her report, and the incident has sparked separate investigations by the Justice Department’s inspector general and the FBI.

Justice Department spokeswoman Kerri Kupec announced Tuesday that MCC’s warden has been reassigned pending outcome of these probes.

Epstein's attorneys meanwhile have tapped a storied pathologist for their own investigation: Dr. Michael Baden, who testified in O.J. Simpson's defense and helped investigate the assassinations of President John F. Kennedy and Martin Luther King Jr.

2nd Circuit's Decision Could Embolden Federal Anti-Corruption Prosecutors

NY Law Journal
By Phillip Bantz
8/13/19

In a ruling that could embolden federal anti-corruption prosecutors, the U.S. Court of Appeals for the Second Circuit has ruled that it's not necessary to meet the heightened standard of proving that a bribe was paid in exchange for an "official act" in Foreign Corrupt Practices Act cases.

The decision in *U.S. v. Ng Lap Seng* is a clear win for the Justice Department and marks the first time that a circuit court has applied the official act rule, which the U.S. Supreme Court established in *McDonnell v. U.S.*, to the FCPA.

"People on the defense side of FCPA cases have long felt that the agencies have taken a tremendously extensive view of their jurisdiction to prosecute FCPA and types of conduct that are violative of the FCPA—and this does nothing to rein that in," said Emily Westridge Black, a partner at Haynes and Boone in Austin, Texas, and Dallas, who specializes in FCPA litigation.

She added, "We can expect that this will not curb and will likely increase enforcement action."

Black also saw the decision as a signal of things to come, describing it as the "tip of the iceberg in terms of people testing the FCPA." Since the Justice Department launched the FCPA pilot program in 2016, prosecutors have focused more on individual accountability. And whereas companies tend to settle FCPA cases because they have so much to lose, individuals are more inclined to take their chances at trial, which has led to more challenges to the scope of the FCPA.

"On the one hand, we're seeing extensive prosecutions, but we'll also see people making these interesting defense arguments that have been percolating in the defense community for a while," Black said. "Looking forward, we'll have a much better sense of the true scope of the FCPA five to 10 years from now."

The defendant in the case, Ng Lap Seng, a wealthy Chinese real estate developer, was convicted of paying bribes and gratuities to United Nations officials in violation of the FCPA. On appeal, he argued, in part, that the trial judge had erred in failing to instruct the jury on the McDonnell standard.

But the Second Circuit held that McDonnell doesn't apply to the FCPA or Section 666, a law that addresses bribery that involves federal funds, because both laws have a more expansive definition of bribery.

"The way I read McDonnell, it wouldn't apply on its face to the FCPA," said Jason Jones, a partner in King & Spalding's special matters and government investigations practice in Washington, D.C. "The Second Circuit seems to me to have gotten it right."

Jones noted the decision also clarified the "FCPA clearly requires a quid pro quo," meaning that proving a defendant offered or provided payment, even for a corrupt purpose, isn't enough by itself to satisfy the statute.

"It's just that the quo is a lot broader under the FCPA," he added. "I think it's good clarity, but I don't think it would be a surprise to most prosecutors."

From:

To:

Cc:

Subject: Jeffrey Epstein's Curious Ties to His Brother's Real-Estate Business

Date: Wed, 14 Aug 2019 20:02:35 +0000

Jeffrey Epstein's Curious Ties to His Brother's Real-Estate Business

NY Magazine

By James D. Walsh

8/14/19

Jeffrey Epstein's apparent suicide over the weekend likely means that his criminal case will not proceed. But in a statement Saturday, Attorney General William Barr issued a sharp warning: "Any co-conspirators should not rest easy." There has been plenty of speculation as to whom may be held responsible for helping or enabling Epstein, from his alleged madam, Ghislaine Maxwell, to the attorneys who handled his business dealings for decades. While he has not been accused of involvement in the sex offender's crimes, new details about Jeffrey's younger brother, Mark Epstein, have raised questions about their business ties, and how close the pair really were.

Jeffrey and Mark grew up together in the Sea Gate community in Brooklyn. Mark, who is a year-and-a-half younger than his brother, went on to start a silk-screening business and, having "semi-retired" at age 39, he dabbled in real estate and philanthropy. In 2009, Mark was named chair of the Cooper Union board. That ended with his resignation in 2015 after the school's controversial decision to begin charging students tuition for the first time in the college's 150-year history.

The Epstein brothers' relationship in adulthood is opaque. In filings, the U.S. Attorney for the Southern District had said Jeffrey had "no known immediate family" and "no meaningful family ties." Yet in a 2009 deposition, Mark said that he knew Donald Trump flew on Jeffrey's plane "numerous times" and that he'd personally seen Trump on his brother's plane once. "They were good friends," Mark recently told the Washington Post. "I know [Trump] is trying to distance himself, but they were." After Jeffrey pleaded not guilty last month to sex trafficking of minors, Mark offered his Florida home to guarantee his brother's bond.

Last month, Mark told Crain's New York that he had no business connection to his brother, but documents show that Mark's real-estate business, Ossa Properties, is linked to J. Epstein & Co., the company through which Jeffrey managed retail billionaire Leslie Wexner's assets. The person in charge of running Ossa Properties, Jonathan Barrett, was also an asset manager for J. Epstein & Co. Mark told Crain's that the connection between the two companies was "a mistake," reminiscent of the "recording error" that linked private-equity tycoon Leon Black's foundation to Jeffrey years after he was convicted of soliciting a minor for prostitution in Florida.

At the center of the curious connection between Mark's real-estate company and his brother is a condominium at 301 East 66th Street, a 15-minute walk from Jeffrey's mansion on East 70th Street. Mark owns the majority of the units in the bland, 16-story, 200-unit building, which he purchased from Wexner in the early 1990s. Mark has said his brother does not own a share of the building, but for years Jeffrey allegedly housed friends, employees, and associates in apartments in the building, including models connected to MC2, the modeling agency in which he invested. (The Daily Beast recently reported that Mark also began dabbling in the modeling industry around the same time Jeffrey invested in MC2.) In 2010, a former MC2 employee said in a sworn statement that the MC2 models were in fact victims of Epstein's underage sex-trafficking ring.

“Jeffrey rents several apartments there where he keeps his girls, alleged models for the MC2 agency he owns,” Florida attorney Brad Edwards, who represents a number of Epstein’s alleged victims, told “Page Six” in 2009. “But Mark acts like he doesn’t even know his brother.”

In addition to the models, the Jeffrey Epstein associates who also rented apartments or ran businesses out of the building included an ex-girlfriend, his pilot, and his MC2 business partner, Jean-Luc Brunel. (One of Epstein’s alleged victims has claimed she was forced to have sex with Brunel.) Two other potential Jeffrey Epstein co-conspirators [REDACTED] both operated businesses that were registered at the building. Former Israeli prime minister Ehud Barak, who was photographed outside Jeffrey’s townhouse in 2016, also regularly spent time at the condo.

“I don’t live in that building,” Mark told Crain’s. “I don’t monitor who uses those apartments.”

From: "[REDACTED] (USANYS)" <[REDACTED]>
To: "[REDACTED]" <[REDACTED]>, "[REDACTED]" <[REDACTED]>
<[REDACTED]>, "[REDACTED] (USANYS)" <[REDACTED]>
Subject: Notes from 2020.11.19 Call with Sternheim, Everdell, and Cohen
Date: Thu, 19 Nov 2020 19:33:56 +0000

2020.11.19 Call with Sternheim, Everdell, and Cohen



- Cohen: two things want to discuss; recent developments related to conditions in MDC; renewed bail application planning to make
- Sternheim: recent conditions are that yesterday she was whisked out of area she spends the day in; she asked what was going on; said they were giving her a test; she wanted to speak to her lawyers before the test; she was told if she did not take the test, she would be put in SHU for 21 days; if she did take the test, would be in SHU for 14 days; then given 2 COVID tests; appears that staff near her had COVID/was coughing; heard other guard say heard that has COVID; she is in her isolation cell; every time open hatch, they spray it so chemicals are in her area; big issue is that they repeatedly search her (strip search, wand); after search, get up close and personal and look in her mouth (invitation to infection);
 - When got her laptop today, it was out of power, had to wait for power cord; environment where can't work; has to balance pad
 - Only reason would get sick it's because of BOP staff; my understanding is that rigid conditions under which detained (and haven't seen ever before, not even Tartaglione) – if that's because of Epstein, she will get sick on BOP's watch, will create another nightmare for the Government
 - Never had clients for terrorism, violence, murder treated the way GM is treated
- Cohen: over 100 years of experience in this district collectively; never seen anything like this before; would like to see you in person ideally next week or at least by Zoom
 - Want to walk you through the renewed bail application have spent 3.5 months putting substantial work into; believe it addresses concerns Government raised at the hearing and in submissions; believe it addresses concerns raised by the Court
 - Would need same level of confidentiality described in the protective order (financial information; personal, private information; suretor information); want to make sure covered by protective order
 - Related request is that when we file, which we feel we have to do soon, if GM remains in, it will likely be the first of many calls in light of current COVID situation; would need to file under seal and would like your consent as well
 - Show real evidence of threats to her and family members and those close to her
- [REDACTED] really appreciate you coming to us with concerns about conditions of confinement and opening dialogue about bail application; in terms of bail application, we are happy to listen and take a look at what you have, will go in with an open mind, but can't at this stage preview or predict what our position will be. In terms of how to treat information you share with us on Monday and sealing, would have to run up the chain; would prefer to do by video
- [REDACTED] able to tell us about what kinds of activities or dissemination concerns you have;
- Cohen: if thought covered by PO, not sure that covered by PO; asking to have things treated as if designated confidential under the order
- Everdell: in order to describe what our proposed bail package is, going to have discuss info that is confidential and sensitive, including for potential co-signers; includes their properties, financial information
- Cohen: understand that everything needs to be made known to gov't, pretrial, and court, but beyond that
- [REDACTED] want us to treat any information provided to us as if marked confidential under PO?

- Everdell: could only use for purposes of bail application; would not publicly disseminate or disclose; would only be shared with prosecution team; individuals looking to come forward are nervous b/c of notoriety of the case; want to give comfort that what telling at meeting will be treated confidentiality and won't be disclosed
- [REDACTED] in evaluating potential bail application, for financial information, might contact bank or vet that information; sometimes take steps to vet cosigners as well; would restrictions prohibit us from doing that
- Everdell: for purposes of meeting, want to describe potential co-signers and what security of bond would look like and discuss certain financial information (most financial information are things already in discovery itself, so some of materials already marked confidential); understand will need to vet co-signers
- Cohen: keep confidential for Monday's purposes and then to extent team needs to vet people, we can work through that
- [REDACTED]: in terms of conditions of confinement, still trying to understand everything that has happened in last 24 hours;
 - Understand that one of staff members on detail who works in area where client is housed tested positive for COVID; understand that everyone who works in that area was sent home to quarantine; rapid test came back negative; sending lab test out; will need to stay in quarantine for 14 days, will test out; during that time she needs to stay in isolation cell; was not aware that searching her the way you described while in quarantine; will reach out to MDC and discuss balancing need for security with disease
 - Understanding is she will still have 3 hours a day to make legal calls; have made request to MDC legal that is going up to warden that she be able to review laptop for 13 hours that she was supposed to be in the day room; will inquire about a writing surface, whether possible to put something into her cell to make review of discovery more practical or move her to somewhere with that kind of furniture; understand that temperate is ; understand no issues with moistness
- Sternheim: anytime anything is given to her, open hatch; every time it is opened and closed it is sprayed; chemical of spray goes into the room where there is no other ventilation; she also has no hot water, soap; not able to self-protect under the conditions
- [REDACTED] will focus on the conditions while she will be in quarantine
- Sternheim: legal calls being done in close proximity to people who are watching her; I could hear people when I was on call with them; was told notetaking was occurring; she is in between 1 to 4 feet distance from these people
- [REDACTED] will follow up
- Everdell: CD that sent with most recent production, can't review that on laptop
- [REDACTED] if want us to load hard drive with just that, can do that; or wait until have hard drive loaded
- Everdell: will get back to you
- [REDACTED]: concerns that expressed before quarantine are mostly on level of searches and surveillance
- Sternheim: she is practically in solitary confinement; when I visit her, there are at least 3 people watching us with a camera; I have asked what camera is for; they say it is not recording; then why is it always set up and moved when they moved us; degree of invasiveness of attorney-client relationship which have not experienced before; she doesn't even have a regular toothbrush; it's one inch
- Cohen: have had same experience with camera; when allowed to see her, not allowed to pass her documents
- [REDACTED] have had multiple conversations with MDC about that
- Sternheim: in most recent visit, was able to hand her something to look at; have put us in a room that's very tight; never seen anything like this
- [REDACTED] client has more access to discovery and more time to review discovery than any other inmate; more time for calls as well
- Sternheim: that may be true; however, whatever is being done to her to prevent what had happened to Epstein, she is being worn down; mentally healthy person; her hair is falling out

[REDACTED]
 Assistant United States Attorney
 United States Attorney's Office
 Southern District of New York

One St. Andrew's Plaza
New York, New York 10007
Tel: [REDACTED]

From: Mariann Wang [REDACTED]
To: "[REDACTED]" <[REDACTED]>
Cc: Gloria Allred <[REDACTED]>
Subject: Re: Follow up
Date: Fri, 20 Nov 2020 18:50:05 +0000

Maurene:

I hope you're well. Could we set up a call maybe on Monday or Tuesday, depending on your/Gloria's availability to hear anything at all on the two requests below, especially more info on the photos? We had been holding off on sharing this potentially difficult-to-hear news with our clients till we had more info from you, but really need to inform them soon.

Thank you,
Mariann

From: Mariann Wang <mwang@chwllp.com>
Sent: Wednesday, October 14, 2020 5:12 PM
To: [REDACTED] <[REDACTED]>
Cc: Gloria Allred <[REDACTED]>
Subject: Re: Follow up

Got it, thank you.

From: [REDACTED] <[REDACTED]>
Sent: Wednesday, October 14, 2020 3:35 PM
To: Mariann Wang <mwang@chwllp.com>
Cc: Gloria Allred <[REDACTED]>
Subject: RE: Follow up

Hi Mariann,

I apologize for the delayed response regarding your other questions. I've been waiting for the case agents to provide me with the answers, but they have been swamped and have not had the chance to get back to me on this. They are traveling for work this week, but I will check back in with them on this when they return.

Best,

From: Mariann Wang <mwang@chwllp.com>
Sent: Monday, October 12, 2020 3:12 PM
To: [REDACTED] <[REDACTED]>
Cc: Gloria Allred <[REDACTED]>
Subject: Re: Follow up

[REDACTED]

Thanks to you and your team for your sensitivity and support in hearing our clients on Friday. They all very much appreciated it.

May I just check in about the other two items below to see when you might have an update. Re the photograph info especially, we don't want to convey the info to our clients until we understand the scope/clarifications.

Thank you,
Mariann

On Sep 30, 2020, at 9:26 PM, Mariann Wang [REDACTED] wrote:

Hi Maurene:

We just wanted to check in on a few things.

The below request re documents/prior communications.

Any other news/info about the photographs.

And whether you/your team might be available on October 9th to interview the clients we had to adjourn a few weeks ago, [REDACTED] [REDACTED] and [REDACTED]

Thanks,
Mariann

From: Mariann Wang <mwang@chwillp.com>

Sent: Thursday, August 13, 2020 6:03 PM

To: [REDACTED] <[REDACTED]>

Cc: Gloria Allred <[REDACTED]>

Subject: Follow up

[REDACTED]

Thanks again for making time to talk the other day. Below are clients for whom we'd like to schedule interviews with your office. (The initials next to their names are just for my purposes to remember who I need to add from my office for these calls/meetings.) I'd also like to hop on the phone when you have a free 10 minutes to briefly discuss a few other clients who we haven't listed below. Please just let me know if you have a moment tomorrow sometime.

Thanks,
Mariann
Cuti Hecker Wang LLP

To Be Scheduled -- interviews

[REDACTED] (AR) - ~2002, one incident in New York.

[REDACTED] (DM) - ~late 2004-late 2005, multiple incidents in New York.

[REDACTED] (JRC) - ~fall 2003 - late 2004, multiple incidents in NY. Some interactions with Maxwell

[REDACTED] (AR) - ~2002, one incident in New York.

[REDACTED] (DM) - ~August 2017 - November 2017, multiple incidents in Paris and Florida. Interacted with others working for Epstein.

[REDACTED] (AR) - ~June 2003 to late 2004, multiple incidents in NY and FL as well as incidents with two other men at Epstein's direction in New York, California, and Washington, DC. In ~2010, final interaction with Epstein included interaction with Prince Andrew at townhouse.

Over earlier time period, Maxwell left VMs on the apartment message machine. [REDACTED] interacted with and/or traveled with multiple others working for Epstein.

[REDACTED] (EH) - ~8-10 incidents in Florida between ~late 2000 and 2001.

From: [REDACTED] <[REDACTED]>
Sent: Tuesday, August 11, 2020 11:51 PM
To: Mariann Wang <mwang@chwlip.com>; Gloria Allred <[REDACTED]>; [REDACTED]
<[REDACTED]>; [REDACTED] <[REDACTED]>
Subject: RE: Zoom conference link for Wednesday at 2 pm ET / 11 am PT

Thank you, I'll plan to use the Zoom link Gloria sent tomorrow at 1pm ET/ 10am PT.

From: Mariann Wang [REDACTED]
Sent: Tuesday, August 11, 2020 11:50 PM
To: [REDACTED] <[REDACTED]>; Gloria Allred <[REDACTED]>; [REDACTED]
<[REDACTED]>; [REDACTED] <[REDACTED]>
Subject: Re: Zoom conference link for Wednesday at 2 pm ET / 11 am PT

Works for me as well.

From: [REDACTED] <[REDACTED]>
Sent: Tuesday, August 11, 2020 11:31 PM
To: Gloria Allred <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED]
[REDACTED] <[REDACTED]>
Cc: Mariann Wang [REDACTED]
Subject: RE: Zoom conference link for Wednesday at 2 pm ET / 11 am PT

Thank you so much. Can we please plan on 1pm ET?

From: Gloria Allred <[REDACTED]>
Sent: Tuesday, August 11, 2020 11:24 PM
To: [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED]
[REDACTED] <[REDACTED]>
Cc: Mariann Wang [REDACTED]
Subject: RE: Zoom conference link for Wednesday at 2 pm ET / 11 am PT

Either one of those new times works for me, Maurene.

Gloria Allred
Allred, Maroko & Goldberg

www.amglaw.com
www.gloriaallred.com
<Outlook-cid_image0.png>
<Outlook-cid_image0.png>

Inducted into National Women's Hall of Fame - 2019

From: [REDACTED] <[REDACTED]>
Sent: Tuesday, August 11, 2020 8:00 PM
To: Gloria Allred <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>
Cc: Mariann Wang <mwang@chwllp.com>
Subject: RE: Zoom conference link for Wednesday at 2 pm ET / 11 am PT

Thank you very much. I apologize—I did not realize that I already have a meeting scheduled from 1:30pm to 3pm ET tomorrow. Would it be possible to move this call either to 1pm ET or to 3pm ET, please?

From: Gloria Allred <[REDACTED]>
Sent: Tuesday, August 11, 2020 5:16 PM
To: [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>
Cc: Mariann Wang <[REDACTED]>
Subject: Zoom conference link for Wednesday at 2 pm ET / 11 am PT

For the call on Wednesday 8/12 at 2 pm ET / 11 am PT –
Please click the link below to join the Zoom Meeting

Please join just a few minutes prior to the start time so the call can begin right away.
Please confirm you've received and thank you.
Diane
<[Outlook-AMGlaw_FIN.png](#)>

Diane Aldrich
Executive Assistant to Gloria Allred

From: Gloria Allred

Sent: Tuesday, August 11, 2020 12:44 PM

To: [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>

Cc: Mariann Wang <mwang@chwlip.com>

Subject: RE: New potential victims of Epstein and some of Maxwell who are willing to speak to you and the FBI.

Thank you. We will send you a Zoom.

Gloria Allred

Allred, Maroko & Goldberg



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<Outlook-cid_image0.png>

[Inducted into National Women's Hall of Fame - 2019](#)

From: [REDACTED] <[REDACTED]>

Sent: Tuesday, August 11, 2020 11:26 AM

To: Gloria Allred <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>

Cc: Mariann Wang <mwang@chwlip.com>

Subject: RE: New potential victims of Epstein and some of Maxwell who are willing to speak to you and the FBI.

Yes, I am available for a call tomorrow (Wednesday 8/12) at 2pm Eastern Time. Please let me know what number to call.

Best,

[REDACTED]

[REDACTED]

Assistant United States Attorney

Southern District of New York

1 St. Andrew's Plaza

New York, NY 10007

[REDACTED]

[REDACTED]

From: Gloria Allred <[REDACTED]>

Sent: Monday, August 10, 2020 7:31 PM

To: [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>; [REDACTED] <[REDACTED]>

Cc: Mariann Wang [REDACTED]

Subject: New potential victims of Epstein and some of Maxwell who are willing to speak to you and the FBI.

My co- counsel, Mariann Wang, and I would like to schedule a call with one of you to discuss some questions we have prior to scheduling our clients' interview with you. Would you be available for a call with us on Wednesday at 2 P.M. e.s.t.?

Gloria Allred

Allred, Maroko & Goldberg



[Inducted into National Women's Hall of Fame - 2019](#)

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From: BOBBI C STERNHEIM [REDACTED]

To: [REDACTED]

Cc: [REDACTED]

Christian Everdell <[REDACTED]>

"Mark S. Cohen" [REDACTED]

Subject: Re: U.S. v. Maxwell

Date: Wed, 02 Dec 2020 00:07:25 +0000

Attachments: BC_-2020-12-01_GM_letter_regarding_defense_request_re_MDC_warden.docx;
ATT00001.htm

The revisions do not change our respective positions.
It merely makes it a "joint" submission.
Thank you-
Bobbi

[REDACTED]

Main: [REDACTED]
Cell: [REDACTED]
Fax: [REDACTED]
[REDACTED]

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On Dec 1, 2020, at 6:46 PM, BOBBI C STERNHEIM [REDACTED] wrote:

We are in the process of reviewing and revising the letter as a "joint submission" per Court order.

[REDACTED]

Main: [REDACTED]
Cell: [REDACTED]
Fax: [REDACTED]
[REDACTED]

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On Dec 1, 2020, at 6:09 PM, [REDACTED] wrote:

Bobbi,

Attached is a draft of the letter. We will plan to file by 7:30 unless we hear from you before then.

Best,
[REDACTED]

From: BOBBI C STERNHEIM [REDACTED]
Sent: Tuesday, December 01, 2020 5:50 PM

[REDACTED]
Cc: Christian Everdell [REDACTED]; Mark S. Cohen [REDACTED]
Subject: U.S. v. Maxwell

When you might circulate a draft of the joint letter?
Thanks

BOBBI C. STERNHEIM, ESQ.
Law Offices of Bobbi C. Sternheim
[REDACTED]

Main: [REDACTED]
Cell: [REDACTED]
Fax: [REDACTED]
[REDACTED]

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<2020-12-01 GM letter regarding defense request re MDC warden.pdf>